Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Court of International Trade

Vol. 15 JUNE 10, 1981 No. 23

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 81-156)

Synopses of Drawback Decisions

The following are synopses of drawback rates issued March 25, 1981, to May 12, 1981, inclusive, pursuant to sections 22.1 through 22.5, inclusive, Customs Regulations.

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner to whom the rate was forwarded or issued by, and the date on which it was forwarded or issued.

DRA-1-09

Dated: May 21, 1981.

File: 213019.

GEORGE C. STEUART,
(For Marilyn G. Morrison, Director,
Carriers, Drawback and Bonds Division).

(A) Company: Alabama Metal Industries Corp.

Articles: Expanded metal; metal lath; steel framing; bar grating; suspended ceiling systems; and cold drawn bar, wire, and rod.

Merchandise: Hot and cold rolled steel sheet; galvanized steel sheet; hot rolled steel bar, wire, and rod.

Factories: Los Angeles, CA; Greenville, SC.

Statement signed: February 13, 1981.

Basis of claim: Appearing in.

Rate forwarded to Regional Commissioner of Customs: New York, April 21, 1981.

(B) Company: American Cyanamid Co.
Articles: Barium lithol red and calcium lithol red.
Merchandise: Tobias acid (2-naphthylamine-l-sulfonic acid).
Factory: Bound Brook, NJ.
Statement signed: October 1, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, April 3, 1981.

(C) Company: Atlantic Packaging Inc., a div. of Atlantic Pepsi.
Articles: Canned carbonated beverages.
Merchandise: Hard refined sugar.
Factory: West Columbia, SC.
Statement signed: June 23, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, March 25, 1981.

(D) Company: Continental Warp Knits, Inc.
Articles: Dyed or undyed nylon piece goods; dyed or undyed blended piece goods.
Merchandise: Nylon yarn.
Factory: Angier, NC.
Statement signed: November 24, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, April 16, 1981.
Revokes: T.D. 67–202–R.

(E) Company: Danbar, Inc.
Articles: Automotive stampings.
Merchandise: Galvanized steel sheet, strip and blanks.
Factories: Warren and Mt. Clemens, MI.
Statement signed: September 17, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York April 3, 1981.

(F) Company: Data General Corp.
Articles: Computer systems; computer subsystems; peripheral computer equipment; semiconductor memory boards.
Merchandise: 16K dynamic RAM and 4K static RAM (random access memory).
Factories: Southboro, MA; Westbrook, ME; Cary, NC; Portsmouth, NH; Austin, TX.

Statement signed: September 2, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: San Francisco, March 31, 1981.
Revokes: T.D. 80–243–G.

(G) Company: Emery Industries, Inc.
Articles: 3-(N,N-bisacetoxyethyl) amino-4-methoxy acetanilide.
Merchandise: 3-amino-4-methoxy acetanilide.
Factory: Lock Haven, PA.
Statement signed: December 11, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Chicago, April 16, 1981.

(H) Company: Exxon Corp., Exxon Chemical Company U.S.A. Division.
Articles: Alcohols and plasticizers.
Merchandise: Olefins known as heptene, octene, nonene, and tetramer.
Factory: Baton Rouge, LA.
Statement signed: May 14, 1979.
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative value at the time of separation.
Rate forwarded to Regional Commissioners of Customs: New York and Houston, April 14, 1981.

(I) Company: Flor-Quim, Inc.
Articles: Amyl cinnamic aldehyde.
Merchandise: N-heptaldehyde.
Factory: Patillas, PR.
Statement signed: July 10, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, March 25, 1981.

(J) Company: Gould, Inc.
Articles: Lead oxide and lead alloys.
Merchandise: Pig lead and metallic antimony.
Factories: Los Angeles, CA; Portland, OR; Frisco, TX; Omaha, NE; St. Paul, MN; Dunmore, PA; Savannah, IL.
Statement signed: August 5, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, March 26, 1981.
Revokes: T.D. 79–230–K.

(K) Company: Joyva Corp.
Articles: Candy products.
Merchandise: Hard refined sugar.
Factory: Brooklyn, N.Y.
Statement signed: October 6, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, April 16, 1981.

(L) Company: Kimball International, Inc.
Articles: Upright and grand pianos.
Merchandise: Piano actions, keyboards, and hammers.
Factories: French Lick and West Baden, IN.
Statement signed: March 11, 1981.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Chicago, April 21, 1981.

(M) Company: Eastman Kodak Co.
Articles: Coupler intermediates (PM 4529, 4530 and 4581); substituted alkyl ester (PM 1585).
Merchandise: Sodium methoxide; N, N-dimethyl formamide.
Factories: Kingsport, TN; Batesville, AR.
Statement signed: February 20, 1981.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Baltimore, April 17, 1981.

(N) Company: Longyear Co.
Articles: Threaded drill rods (mid-body tubing only).
Merchandise: Cold drawn seamless mechanical steel tubing.
Factories: Minneapolis, MN; Roseville, MN (2).
Statement signed: February 13, 1981.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Chicago, April 21, 1981.
Revokes: T.D. 79–214–L.

(O) Company: Mastic Corp.
Articles: Vinyl siding and accessories.
Merchandise: Powdered polyvinyl chloride (PVC) resin.
Factories: South Bend, IN; Stuarts Draft, VA.
Statement signed: January 26, 1981.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, April 13, 1981.

(P) Company: Mercier Corp.
Articles: Fluorspar fluxes in form of briquettes, bricks, blocks; Ferrosilicon briquettes, bricks; blocks, Ferromanganese briquettes, bricks, blocks; Ferrosilicon/Ferromanganese briquettes, bricks, blocks.
Merchandise: Fluorspar containing over 97% calcium fluoride; Fluorspar containing from 70% to 97% calcium fluoride; Ferrosilicon; Ferromanganese.
Factories: Dearborn, MI; Baltimore, MD.
Statement signed: October 24, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, March 25, 1981.

(Q) Company: Mobay Chemical Corp.
Articles: Isocyanates.
Merchandise: Desmodur PU 1844 (polyphenylene polymethylene isocyanate with high diphenylmethane diisocyanate content).
Factories: Baytown, TX; New Martinsville, WV.
Statement signed: November 26, 1980.
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative value at the time of separation.
Rate forwarded to Regional Commissioner of Customs: New York, April 13, 1981.
Revokes: T.D. 78–233–P.

(R) Company: RCA Corp.
Articles: Television picture tubes (kinescopes).
Merchandise: Yoke assembly.
Factories: Marion, IN; Lancaster and Scranton, PA.
Statement signed: February 24, 1981.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Baltimore, April 16, 1981.

(S) Company: Rockwell International Corp.
Articles: Finished axles, axle kits, components and finished parts.
Merchandise: Various specified rough castings and forgings.
Factory: Winchester, KY.
Statement signed: October 15, 1980.
Basis of claim: Used in, less valuable waste.
Rate forwarded to Regional Commissioner of Customs: New York, March 30, 1981.

(T) Company: The Sherwin-Williams Co.
Articles: Tobias acid.

Merchandise: Beta naphthol.
Factory: Chicago, IL.
Statement signed: February 24, 1981.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, April 10, 1981.

(U) Company: Sony Magnetic Products, Inc. of America.
Articles: Video/audio magnetic cassette tapes (blank).
Merchandise: Plastic cassette parts.
Factory: Dothan, AL.
Statement signed: February 20, 1981.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Los Angeles, April 13, 1981.

(V) Company: Star Manufacturing Co. of Oklahoma.
Articles: Pre-engineered building systems and component parts.
Merchandise: Galvanized steel coil and hot rolled steel coil.
Factories: Oklahoma City, OK; Homer City, PA; Cedartown, GA; Marysville, CA.
Statement signed: December 1, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Houston, April 3, 1981.

(W) Company: Tubular Finishing Works, Inc.
Articles: Drill pipe; tool joints; upset and threaded seamless and ERW tubing.
Merchandise: Plain-end unfinished seamless drill pipe tubes; unfinished tool joints; seamless and ERW tubing.
Factory: Navasota, TX.
Statement signed: September 15, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Houston, April 16, 1981.

(X) Company: Velsicol Chemical Corp.
Articles: Buthidazole, a herbicide, in technical form and wettable products.
Merchandise: Chloroacetaldehyde dimethyl acetal.
Factory: Beaumont, TX.
Statement signed: January 26, 1981.
Basis of claim: Used in.

Rate forwarded to Regional Commissioner of Customs: Houston, March 26, 1981.

(Y) Company: Volkswagen of America, Inc.
Articles: Various automobile stampings.
Merchandise: Cold rolled draw quality aluminum killed carbon steel sheet.
Factory: South Charleston, WV.
Statement signed: October 27, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, March 30, 1981.

(Z) Company: Zilog.
Articles: Fabricated semiconductor die in wafer form.
Merchandise: Raw silicon wafers.
Factory: Cupertino, CA.
Statement signed: October 6, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: San Francisco, May 12, 1981.

(T.D. 81–157)

Synopses of Drawback Decisions

The following are synopses of drawback rates issued November 26, 1974, to April 28, 1981, inclusive, pursuant to sections 22.1 through 22.5, inclusive, Customs Regulations.

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(a), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner who issued the rate, and the date on which it was signed.

DRA-1-09

Filed: 213031.

Dated: May 22, 1981.

GEORGE C. STEUART
(For Marilyn G. Morrison, Director,
Carriers, Drawback and Bonds Division).

347-181 O - 81 - 2

(A) Company: Astralloy-Vulcan Corp.
Articles: Wear liners, wear plates, and other mining parts.
Merchandise: Imported alloy steel.
Factory: Birmingham, AL.
Statement signed: April 10, 1981.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: New Orleans, April 17, 1981.

(B) Company: CX Corp.
Articles: Photographic plate equipment and accessories.
Merchandise: Imported photographic and electronic parts, components and sub-assemblies.
Factory: Seattle, WA.
Statement signed: February 11, 1981.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: San Francisco, March 12, 1981.

(C) Company: Custom Engineering Inc.
Articles: Diesel engine generator sets.
Merchandise: Imported metal generator skids.
Factory: Peoria, IL.
Statement signed: February 10, 1981.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: New York, April 2, 1981.

(D) Company: Duplo U.S.A. Corp.
Articles: Duplicating machines.
Merchandise: Imported parts for duplicating machines.
Factory: Gardena, CA.
Statement signed: April 8, 1981.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Los Angeles, April 28, 1981.

(E) Company: Freedland Industries Corp.
Articles: Hot and cold rolled steel sheet and strip cut to various sizes.
Merchandise: Imported hot rolled and cold rolled steel sheet and strip in coil.
Factory: Dearborn, MI.
Statement signed: November 4, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: New York, April 15, 1981.

(F) Company: G. F. Vaughan Tobacco Co.
Articles: Redried tobacco products.
Merchandise: Imported and drawback unprocessed stemmed and unstemmed leaf tobacco.
Factory: Lexington, KY.
Statement signed: October 14, 1980.
Basis of claim: Used in, less valuable waste.
Rate issued by Regional Commissioner of Customs: Chicago, March 18, 1981.
Revokes: T.D. 75–208–V.

(G) Company: Hitachi Magnetics Corp.
Articles: Hicorex base and additive powders in powder form, milled or unmilled, or contained in magnets formed from a blend of the powders.
Merchandise: Imported praseodymium oxide, samarium oxide, gadolinium oxide.
Factory: Edmore, MI.
Statement signed: March 24, 1981.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Chicago, April 21, 1981.

(H) Company: Hitron Corp.
Articles: Medical diagnostic equipment.
Merchandise: Imported medical apparatus and parts; data processing equipment.
Factory: East Providence, RI.
Statement signed: March 26, 1981.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Boston, April 10, 1981.

(I) Company: Hydra-Mac, Inc.
Articles: Loaders.
Merchandise: Imported engines (diesel and gas).
Factory: Thief River Falls, MN.
Statement signed: October 30, 1980.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: New York, April 15, 1981.

(J) Company: Lone Star Manufacturing Co., Inc.
Articles, Air conditioning units, adaptor kits, idle compensation kits.
Merchandise: Imported valves, hoses, nipples, clips, clamps, rings and relays.

Factory: Fort Worth, TX.
Statement signed: February 20, 1981.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: San Francisco, March 23, 1981.

(K) Company: Macdraw, Inc.
Articles: Wire drawing machines, annealers and spoolers.
Merchandise: Imported parts for wire drawing machines, annealers and spoolers.
Factory: Williamsport, MD.
Statement signed: March 4, 1981.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Baltimore, March 18, 1981.

(L) Company: Micro Tracers, Inc.
Articles: Feed additives "Sanders Special" Microtracer F -Red/Blue.
Merchandise: Imported food dyes (FD and C Red #3 food color and patent Blue V food color).
Factory: San Francisco, CA.
Statement signed: April 14, 1981.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: San Francisco, April 20, 1981.

(M) Company: Minnesota Mining and Manufacturing Co.
Articles: QA 166 Y Flurandrenolide tape, bulk.
Merchandise: Imported Flurandrenolide (QA 103Q).
Factories: Cottage Grove and St. Paul, MN; Brookings, SD; Cordova, IL.
Statement signed: April 6, 1981.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Chicago, April 22, 1981.

(N) Company: Miss Elliette, Inc.
Articles: Dresses or dress parts.
Merchandise: Imported yardage.
Factory: Vernon, CA.
Statement signed: April 7, 1981.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Los Angeles, April 8, 1981.

(O) Company: Pak-Mor Manufacturing Co.
Articles: Refuse collection trucks.
Merchandise: Imported Mercedes-Benz chassis.
Factories: Duffield, VA; San Antonio, TX.
Statement signed: December 10, 1980.
Basis of claim: Used in, less valuable waste.
Rate issued by Regional Commissioner of Customs: Baltimore, March 16, 1981.

(P) Company: Palette Sample Card Co., Inc.
Articles: Sample swatch sets and sample swatches in book form.
Merchandise: Imported piece goods.
Factory: Long Island City, NY.
Statement signed: February 20, 1981.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: New York, April 15, 1981.

(Q) Company: Perfection Finishers, Inc.
Articles: Mox processed flux coated electrodes (welding rods).
Merchandise: Imported flux coated electrodes (welding rods).
Factory: Wauseon, OH.
Statement signed: November 21, 1980.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: New York, April 2, 1981.

(R) Company: RTE–ASEA Corp.
Articles: Packaged substations also known as "Power Delivery Systems".
Merchandise: Imported electrical components.
Factory: Waukesha, WI.
Statement signed: March 27, 1981.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Chicago, April 22, 1981.

(S) Company: R. J. Reynolds Tobacco Co.
Articles: Cigarettes.
Merchandise: Imported cigarette filter rods.
Factory: Winston-Salem, NC.
Statement signed: February 11, 1981.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Miami, April 2, 1981.

(T) Company: Eli Sandman Co.
Articles: Resin impregnated woven fabrics and discs.
Merchandise: Imported woven fabrics.
Factory: Worcester, MA.
Statement signed: August 22, 1974.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Boston, November 26, 1974.

(U) Company: Santa Fe Systems Co.
Articles: Pressure piping skids.
Merchandise: Imported pipe-carbon steel.
Factory: Santa Fe Springs, CA.
Statement signed: April 3, 1981.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Los Angeles, April 20, 1981.

(V) Company: Sanyo Manufacturing Corp.
Articles: Television receivers, microwave ovens and close-captioned adapters.
Merchandise: Imported parts and components.
Factory: Forrest City, AR.
Statement signed: March 27, 1981.
Basis of Claim: Appearing in.
Rate issued by Regional Commissioner of Customs: New Orleans, April 24, 1981.

(W) Company: Skyway Recreation Products, a Division of Skyway Machine, Inc.
Articles: Bicycle wheels known as TUFF WHEEL I, TUFF WHEEL II, and TUFF WHEEL '16'.
Merchandise: Imported Suntour front axle assemblies with hub assembled, Suntour rear unit hub assembly (assembled), Suntour spare parts and hardware, Bendix coaster brakes and Nankai Tekko front axles.
Factory: Redding, CA.
Statement signed: March 10, 1981.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: San Francisco, April 8, 1981.

(X) Company: South Coast Terminals.
Articles: Marine lubricatiug oil.
Merchandise: Imported lube oil concentrates.

Factory: Houston, TX.
Statement signed: April 13, 1981.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Houston, April 20, 1981.

(Y) Company: Thermo King Corp.
Articles: Refrigerated transportation units.
Merchandise: Imported 4 cylinder industrial diesel engines and 2 and 3 cylinder diesel engines.
Factories: Minneapolis, MN; Louisville, GA.
Statement signed: December 11, 1980.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: New York, April 15, 1981.

(Z) Company: Willing B. Wire Corp.
Articles: .007 and .0082 inch CB–3 specialty wire.
Merchandise: Imported .217 or .250 inch CB–3 specialty steel rod.
Factories: Beverly and Cinnaminson, NJ.
Statement signed: March 20, 1981.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Baltimore, April 1, 1981.

(T.D. 81–158)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to Section 522(C), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 81–82 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Austria schilling:

May 11, 1981	$0.062035
May 12, 1981	.061767
May 13, 1981	.061881
May 14, 1981	.061237
May 15, 1981	.061501

Belgium franc:	
May 11, 1981	$0.026738
May 12, 1981	.026667
May 13, 1981	.026724
May 14, 1981	.026385
May 15, 1981	.026560
Brazil cruzeiro:	
May 11–15, 1981	$0.012057
People's Republic of China yuan:	
May 11, 1981	Quarterly ($0.612107)
May 12–13, 1981	$0.578938
May 14–15, 1981	.576070
Denmark krone:	
May 11, 1981	$0.139130
May 12, 1981	.138658
May 13, 1981	.138696
May 14, 1981	.137703
May 15, 1981	.137988
Finland markka:	
May 11, 1981	$0.233100
May 12, 1981	.232369
May 13, 1981	.232721
May 14, 1981	.230787
May 15, 1981	.230415
France franc:	
May 11, 1981	$0.181686
May 12, 1981	.180701
May 13, 1981	.180750
May 14, 1981	.179582
May 15, 1981	.179614
Germany deutsche mark:	
May 11, 1981	$0.437828
May 12, 1981	.435635
May 13, 1981	.435540
May 14, 1981	.432713
May 15, 1981	.433088
Hong Kong dollar:	
May 11–15, 1981	Quarterly ($0.189036)
Ireland pound:	
May 11, 1981	$1.6020
May 12–13, 1981	1.5940
May 14, 1981	1.5825
May 15, 1981	1.5820

Italy lira:
May 11, 1981 ..... $0.000881
May 12–13, 1981 ..... .000877
May 14, 1981 ..... .000868
May 15, 1981 ..... .000867
Iran rial:
May 11–15, 1981 ..... Quarterly ($0.13236)
Netherlands guilder:
May 11, 1981 ..... $0.393546
May 12, 1981 ..... .392157
May 13, 1981 ..... .391773
May 14, 1981 ..... .388954
May 15, 1981 ..... .389560
Norway krone:
May 12, 1981 ..... $0.176445
May 13, 1981 ..... .176523
May 14, 1981 ..... .175778
May 15, 1981 ..... .175670
Philippines peso:
May 11–15, 1981 ..... Quarterly ($0.130039)
Portugal escudo:
May 11, 1981 ..... $0.016529
May 12, 1981 ..... .016483
May 13, 1981 ..... .016474
May 14, 1981 ..... .016340
May 15, 1981 ..... .016393
Singapore dollar:
May 11–15, 1981 ..... Quarterly ($0.478469)
Spain peseta:
May 11, 1981 ..... $0.010953
May 12, 1981 ..... .010939
May 13, 1981 ..... .010965
May 14, 1981 ..... .010854
May 15, 1981 ..... .010887
Sweden krone:
May 11, 1981 ..... $0.205339
May 12, 1981 ..... .204415
May 13, 1981 ..... .204290
May 14, 1981 ..... .203335
May 15, 1981 ..... .203004
Switzerland franc:
May 11–12, 1981 ..... $0.481812
May 13, 1981 ..... .481232
May 14, 1981 ..... .480538
May 15, 1981 ..... .483325

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Thailand baht (tical):
May 11–15, 1981 ..... Quarterly ($0. 048426)
United Kingdom pound:
May 11, 1981 ..... $2. 1010
May 12, 1981 ..... 2. 0875
May 13, 1981 ..... 2. 0775
May 14, 1981 ..... 2. 0663
May 15, 1981 ..... 2. 0745
Venezuela bolivar:
May 11–15, 1981 ..... Quarterly ($0. 232883)

(LIQ–03–01 O:C:E)

Dated: May 15, 1981.

KENNETH A. RICH,
Chief,
Customs Information Exchange.

ERRATUM

In Customs Bulletin Vol. 15, No. 17, dated April 29, 1981, in T.D. $81–89, the following rate should be corrected.

India rupee:
March 27, 1981 ..... $0.120337

U.S. Customs Service

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

The following are decisions made by the United States Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the Customs Bulletin.

SALVATORE E. CARAMAGNO
(For the Director,
Office of Regulations and Rulings).

(C.S.D. 81-121)

Classification: Applicability of the U.S. Value as a Basis of Appraisement Where Merchandise Is Freely Sold to Unrelated U.S. Purchasers

Date: November 7, 1980
File: CLA-2:R.R.U.C.V
065122 BG

Re Decision on Application for Further Review of Protest No. 1001-9-011316, dated November 21, 1979.

AREA DIRECTOR OF CUSTOMS,
New York Seaport,
New York, New York.

DEAR SIR: The issue presented by this protest is whether a United States value, section 402(c), Tariff Act of 1930, as amended by the Customs Simplification Act of 1956 exists for the subject merchandise. The concerned appraising officer has deemed constructed value, section 402(d), to be the proper basis of appraisement.

The record before us shows that the protestant, (corporate name) imported titanium dioxide pigments from its wholly owned subsidiary in West Germany. The transfer price did not include the value of an assist supplied by the importer as well as an amount for profit and some general expenses. There were no other sales of such or similar merchandise upon which to base an export value. Protestant does not

dispute the elimination of export value, section 402(b), as a basis of appraisement.

All parties agree that the merchandise under protest was freely sold in the United States in the usual wholesale quantities and in the ordinary course of trade. The importer has claimed as deductions from the United States selling price under section 402(c)(1), no amount for profit and ten percent for general expenses. (Corporate name) is the only importer of the same class or kind as the merchandise undergoing appraisement.

The Import Specialist rejected United States value as a basis of appraisement because the freely offered United States selling price is not calculated to compensate for the missing or deficient elements of value in the transfer price. Also the Import Specialist does not consider the importer's general expenses and profit (i.e. no profit) to be usual under section 402(c)(1). According to the Import Specialist, if the importer's claimed general expenses and profit are deducted from the United States selling price, the United States value would be equal to the defective transfer price. Not to accept as statutory export value a transfer price that is admittedly defective, but to accept as statutory a United States value that is the same or approximately the same as the defective transfer price is contrary to the legislative intent of the value statute.

Protestant contends that section 402(g) does not eliminate United States value as a basis of appraisement even where exporters and importers are related and the export sales price is defective. Section 402(g) applies only to subsection (c)(1) United States value determinations (i.e. the statutory allowances for general expenses and profit) and may not be used to disregard United States value as a basis of appraisement in its entirety. In addition, protestant contends that its figures for general expenses and profit are usual and should be used.

The initial determination to be made is whether the merchandise is freely sold or in the absence of sales offered for sale in the principal market of the United States for domestic consumption in the usual wholesale quantities and in the ordinary course of trade. In this case it is not in dispute that the merchandise is freely sold in the United States to unrelated purchasers at published price list prices. Therefore, the only issue is what are the proper allowances for usual general expenses and profit under section 402(c)(1). If there is only one importer of merchandise of the same class or kind as the merchandise undergoing appraisement, then the amount of general expenses and profit to be deducted under section 402(c)(1) is the amount actually realized by the importer. In the instant case it has been found that there are no other importers of merchandise of the same class or kind. Therefore, the actual general expenses and profit of the protestant

would be used unless section 402(g) is applicable. This section provides that in determining the allowances under section 402(c)(1) transactions between related parties may be disregarded where an element of value does not fairly reflect the amount usually reflected in sales of merchandise of the same general class or kind as that undergoing appraisement. Absent persuasive evidence that an element of value is not fairly reflective of an amount usually reflected, section 402(g) may not be employed to disregard transactions between importer and related exporters in determining United States value. *United States* v. *Geigy Chemical Corporation et al.*, C.A.D. 1155, 63 CCPA 1 (1975).

There is no evidence in record before us to show that the absence of profit is not *bona fide* in this case. Although little, if any, profit is reflected in the export transaction, no profit is incurred in the United States sales transaction as well. The protestant explains that the titanium dioxide market in the United States is extremely competitive and that it is sometimes necessary to sell a particular product at a loss in order to compete and maintain its market share in the United States. The protestant's product line as a whole generates a small percentage of profit. This transaction does not involve a situation where there is a rigged low price between a related importer and exporter for export and a large amount of profit is claimed on the sale in the United States in order to obtain a low appraisement. There is no evidence here to suggest a shifting of profits from the export transaction to the United States sales transaction for the purpose of avoiding duties.

It should also be noted that an importer may waive the allowance for profit under section 402(c)(1). *Millmaster International Corp.* v. *United States*, 57 CCPA 108, C.A.D. 987 (1970). Since an importer is permitted to waive the deduction for profit so that the allowance given is zero, it follows that there is no reason to reject a claim for zero amount of profit. Therefore, we find no basis in the record before us for rejecting United States value in this case because of the absence of profit in the United States transaction.

Customs has frequently ruled that the fact that an assist has been supplied to the exporter does not require that the transaction be disregarded. As the importer must bear the costs associated with providing the assists, these costs are a factor that enters into the computation of a selling price within the United States. ORR 74–0055, dated January 25, 1974. The importer, however, cannot deduct this cost from his selling price. Section 402(c)(1) allows deductions for general expenses usually incurred in connection with sales made in the United States. This section does not authorize deductions from the United States selling price of the costs incurred in providing assists or other expenses assumed for the foreign manufacturer. These costs are not

incurred in connection with sales in the United States but are, rather, manufacturing costs and are, therefore, not permitted as allowances under section 402(c)(1).

On the other hand, the fact that the transfer price may not cover all production costs does not affect the validity of the general expenses incurred in the United States on the *sale* of the merchandise.

Therefore, if it is satisfactorily determined that the general expenses claimed by the protestant are in fact general expenses incurred in connection with sales in the United States as required by section 402(c)(1), we find no basis for rejecting United States values as basis of appraisement.

Accordingly, the protest is granted to the extent outlined above. Your file is returned.

(C.S.D. 81–122)

Value: Proper Application of Statutory United States Value as a Basis of Appraisement

Dated: November 12, 1980
File: CLA-2:RRUCV
055394 BS

The importer ("X") has entered into a long term contract with an unrelated distributer ("Y") to furnish the latter with finished men's and boys' jeans. The material for the jeans is purchased by X from Y, cut into components in the United States, and then sent together with zippers, trimming, etc., to X's subsidiaries in Mexico for assembly into the finished product. The completed garments are then imported under the provisions of item 807.00, Tariff Schedules of the United States (TSUS). X's entire production is sold to Y pursuant to the contract.

Under the agreement, the price paid by Y is budgeted but changes from year to year. There is an agreed upon profit for X which is, uniformly, 6 percent of the budgeted cost. When actual costs exceed the amount budgeted, X's profit is reduced to a factor of less than 6 percent. However, this is remedied by continually changing the budgeted cost in ensuing extensions of the contract so as to bring them into line with actual experience and, thus, the profit of 6 percent is very closely adhered to.

The parties agree that statutory export value (section 402(b), Tariff Act of 1930, as amended), is not applicable since the merchandise is not freely sold or offered for sale for exportation to the United States (i.e., acts as a selected purchaser within the meaning of section 402(f)(b) of the Act, and the price between X and the foreign assembler does not contain all elements of value). Further, our New York office

advises that an export value for similar merchandise can not be ascertained.

It is X's opinion that the basis of appraisement should be United States value, section 402(c) of the Act. On the other hand, the New York Import Specialist believes that United States value is inapplicable since the U.S. sales are confined to the distributor who furnishes the material to the importer. While the Director of Classification and Value at Laredo, Texas, does not specifically argue that this basis of appraisement is inapplicable, he disagrees with certain of the cost submissions made by the importer.

Pursuant to section 402(c), United States value is established by using as a base the price at which the merchandise is freely sold or offered for sale in the principal market of the United States for domestic consumption. In the case of a selected purchaser the goods must be sold or offered for sale at a price which fairly reflects the market value. Since the purpose of this provision is to approximate export value, certain deductions are made from the selling price in the United States, i.e., Customs duties, ocean freight, insurance, and the usual general expenses and profit added by sellers of imported merchandise of the same class or kind as the merchandise undergoing appraisement.

Based upon the circumstances of sale between X and Y, and the fact that they are unrelated, we believe that the record supports a finding that United States value is the appropriate basis of appraisement, i.e., that the price between the parties fairly reflects the market value. We are of the opinion that in the instant case United States value will recover all elements of cost that might be missing in export value, since in pricing its product for sale in the United States, X will have to consider all of the costs involved in the manufacture of the merchandise, including the cost of the raw materials purchased from the distributor.

In connection with the allowances to be made for general expenses and profit, which have been a major concern to Customs officials and importers in the past, we believe some comments are in order.

The primary concern of Customs has been that rigged export prices in related party transactions will affect the allowances for general expenses and profit reflected in the domestic sales even though such transactions are between unrelated parties. Thus, in instances where many of the general expenses that would ordinarily be incurred by an unrelated foreign supplier are instead incurred by the related U.S. company, the allowance for general expenses and profit might appear to be inordinately high. A similar situation would result where the foreign related's books reflect little or no profit. This subject was an issue confronting the Court of Customs and Patent Appeals in *United States* v. *Geigy Chemical Corp.*, 63 CCPA 1, CAD 1155 (1975).

In that case, the trial court had found that section 402(g) (which gives the Government the authority to disregard certain transactions between described related parties) could not be used to disregard the export transaction, since in the domestic transaction, which is the subject matter of statutory U.S. value, the parties were unrelated. The Appellate Term disagreed with this principle, finding that construction of the statute to narrow. The court stated that the decision of the trial court ". . . disregards the fundamental fact that rigged prices in the export market may materially affect the importer's profits and general expenses in the United States market". The court concluded that transactions between related exporters and importers could be disregarded even though the allowances are realized in sales in the United States between nonrelated parties.

The Court of Customs and Patent Appeals adopted a middle of the road approach. The Court agreed that section 402(g) may be applied to the determination of United States value when the importer and exporter are related, but only under certain circumstances. In the Court's view, when the importer and its customers are unrelated, section 402(g) may be applied to disregard the export transactions *only* if the facts establish "an element of value does not fairly reflect the amount usually reflected in sales . . . of merchandise of the same general class or kind as that undergoing appraisement". Thus, if the profit and general expenses, contemplated as allowances used in calculating the United States value figure, are those "usually" occurring in connection with sales in the United States market, of merchandise of the same class or kind as the merchandise undergoing appraisement, then section 402(g) can not be utilized to disregard the export transaction.

Applying these principles to the instant case, the importer's actual general expenses and profit are to be accepted as the appropriate allowances unless you determine by persuasive evidence that they are not the usual percentages occurring in connection with sales *in the United States market* of merchandise of the same class or kind as the merchandise undergoing appriasement.

(C.S.D. 81–123)

Entry: Applicability of Duty-Free Exemption Status to Articles Shipped to Then Returned From the Virgin Islands

Date: November 12, 1980
File: ENT 1–01 RRUEE
714571 M

This ruling concerns whether a watch purchased and shipped to the Virgin Islands by an individual for his use there is entitled to the duty-

free exemption for personal effects taken abroad when he returns to the United States with that watch.

Issue: 1. Is a watch purchased by a resident in the United States, and shipped abroad for his use there, entitled to the duty-free exemption for personal effects upon its return to the United States with the resident?

2. Is the watch entitled to duty-free entry in the Virgin Islands?

Facts: An American resident purchased a Japanese-made watch at a local retail store in Los Angeles. Instead of taking the watch with him from the store where he bought it, he had the store ship the watch to him at his hotel in the Virgin Islands of the United States, where he was going for a vacation.

When the watch was imported in the Virgin Islands, duty was assessed by the Virgin Islands Government on the watch at the rate of 6 percent of the value of the watch. When the resident returned to the United States, he was assessed duty by U.S. Customs on his watch because Customs at the port of entry contended that the watch did not accompany him when he went abroad and was, therefore, not entitled to the personal effects exemption for returning residents.

The American resident contends that his watch was part of his personal effects and as such, he was entitled to the duty-free exemptions for personal effects both under U.S. Virgin Islands laws and the Tariff Schedules of the United States (TSUS), and thus should have been able both in the Virgin Islands and in the United States to enter such articles free of duty.

Law and analysis: Although the Virgin Islands of the United States is an insular possession of the United States, it is not part of the customs territory of the United States. The customs territory of the United States is defined in General Headnote 2 of the Tariff Schedules of the United States (19 U.S.C. 1202), as including the 50 States, the District of Columbia, and Puerto Rico. Therefore, for Customs purposes, when one goes to the Virgin Islands it is the same effect as if one went to a foreign country. The articles brought back from the Virgin Islands are subject to duty, unless specifically exempted from duty. Likewise, unless specifically exempted from duty by Virgin Island law, the article brought into the U.S. Virgin Islands by a U.S. resident is subject to Virgin Islands duty.

Section 1 of the Organic Law of the Virgin Islands of the United States of 1936, provides that unless exempted elsewhere in the statute, an import duty of 6 percent of the value of the merchandise shall be assessed on articles imported there. Exemption 12 of section 2 provides that "Traveling outfits and furniture a-moving already used when they are the property of the traveler or the person removing" are entitled to duty-free entry. The term "traveling outfits" has been interpreted as including jewelry. We believe that a watch is a standard

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commodity worn by a person, and may be considered to be part of his traveling outfit. However, the term "traveling outfits" connotates that the items involved are accompanying the individual. Furthermore, that term is qualified by the words "already used." Certainly, a new watch shipped to the Virgin Islands neither would be accompanying the individual nor would it be used. Therefore, we believe that the watch involved was not exempt from Virgin Islands duty.

Item 813.10, TSUS, provides that all personal and household effects imported by, or for the account of, a returning resident arriving in the United States are entitled to duty-free entry provided such personal and household effects were "taken abroad by him or for his account." The question raised in this case concerns the meaning of "taken abroad." Does this term mean that the personal and household effects must have accompanied the resident or the person who took such effects out on behalf of the resident, or may such effects be shipped abroad for the resident's account?

We are unaware of any court cases or customs rulings concerning the meaning of this term as it appears in item 813.10, TSUS. However, the tools of trade provision (item 810.20, TSUS) has a similar provision. It provides that tools of trade, etc., imported by or for the account of any person arriving in the United States from a foreign country is entitled to duty-free entry provided such tools, etc., were "taken abroad by him or for his account." We have issued numerous rulings to the effect that the term "taken abroad" as used in item 810.20, TSUS, is broad enough to include such articles shipped abroad. The criteria in such cases was that in order for such articles to be exempt as tools of trade under item 810.20, TSUS, such tools must be sent out and returned in the name of an individual person, rather than a partnership or corporation, and the person on whose account the tools were taken out must be absent from the United States during some portion of the time when the tools were outside of this country. For an example of the latest ruling on this matter, see C.S.D. 80–155 (Ruling letter 711263 M dated November 7, 1979).

We do not see why the words "taken abroad" as used in item 813.10, TSUS, should be any more restricted and preclude a resident from being entitled to that personal exemption because his personal effects were shipped to him abroad. Thus, we believe that the ruling letters interpreting the term "taken abroad" as set forth in item 810.20, TSUS, as broad enough to include such articles shipped abroad, may be applied by analogy to item 813.10, TSUS. Therefore, we believe that the resident was entitled to the duty-free exemption for personal effects under item 813.10, TSUS, for his watch.

Holding: 1. A watch purchased by a resident in the United States and shipped abroad for his use there is entitled to the duty-free ex-

emption for personal effects upon its return to the United States with the resident.

2. The watch is not entitled to duty-free entry in the Virgin Islands because by being shipped, rather than worn by the person, it is not considered part of the person's traveling outfit.

(C.S.D. 81–124)

Classification: Various Valves Used in Hydraulic Systems

Date: November 13, 1980
File: CLA-2:RRUCGC
061563 JLV

Re Internal Advice 117/79 concerning classification of certain valves used in hydraulic systems.

DISTRICT DIRECTOR OF CUSTOMS,
477 Michigan Avenue,
Detroit, Michigan.

DEAR SIR: In your memorandum dated May 23, 1979, you requested advice (No. 117/79) concerning the classification of modular valves used in hydraulic systems. The following decision is our response.

Issue: Are certain modular valves classifiable under the provision for taps, cocks, valves, and similar devices, however operated, used to control the flow of liquids, gases, or solids, all the foregoing and parts thereof, in items 680.20 through 680.28, Tariff Schedules of the United States (TSUS), or under the provision for machinery parts not containing electrical features and not specially provided for, in item 680.90, TSUS?

Facts: The articles in question are various valves which are designed for use in a modular group and which perform a variety of functions within a hydraulic system. Valves other than the modular group are also designed to perform in hydraulic systems and are generically the same.

The valves, in addition to regulating the flow of fluid, are designed to control the fluid for the purpose of controlling other machines, pistons, or mechanisms. Informational literature offered by the manufacturer groups the valves into two categories: pressure control and directional control.

Pressure control valves limit pressure, regulate reduced pressure in systems, or function when there is a change in operating pressure. These valves are named for primary functions, such as relief valves, sequence valves, brake valves, counterbalance valves, and reducing valves.

Directional valves control the direction of flow but vary considerably in construction and operation. They are generally called check valves by the manufacturer and are described according to their principal characteristics, such as the type of internal valving element, method of actuation, and number of flow paths.

Models DGMC2 and DGMC are pressure relief valves designed as two stage spring loaded poppet pilot-operated valves with spring loaded piston. Model DGMX1 is a pressure reducing valve designed as a self-operated spring loaded sliding spool valve. Model DGMR1 is a backpressure valve and Model DGMR1 is a pressure sequence valve. Both are of the same construction as the DGMX1. The above pressure control valves are actuated as a result of a change in operating pressure and have adjustable tensions.

Model DGMGC values are self-operated spring loaded poppet direct check valves which allow flow in one direction only. Model DGMPC series valves are spool pilot-operated spring loaded poppet twin check valves. The DGMFN series valves are non-compensated flow control valves with an integral spring loaded poppet check valve. This configuration allows free flow in one direction and metered flow in the other. The DG4V is a single or double solenoid actuated, sliding spool four-way directional control valve. These directional control valves generally have a cracking pressure of 5 psi. and are not adjustable.

Law and analysis: The proper classification of these hydraulic valves is questioned on the basis of two ruling letters: Headquarters letters dated November 30, 1970 (file 007588) and ORR Ruling 207–70.

In the letter of November 30, 1970, directional control valves were classified under the *eo nomine* provision for valves, except if their function is "the control and monitoring of other machines or mechanisms with which they are used wherein the flow merely serves as the driving medium." Under that rationale, such articles would be classifiable as machinery parts in item 678.50 or 680.90, TSUS, depending on whether or not they contain electrical features.

ORR Ruling 207–70 apparently concerned pneumatically operated devices that were more than valves because they controlled and monitored the machines or mechanisms in which they were used. The ruling is not clear as to whether the devices were used in machinery to control other mechanisms, or were articles containing valves or were valve actuators.

The above rulings are not patently wrong if the devices in question were valve actuators or other devices which performed a function that was more than merely controlling or regulating the flow of a fluid. Both rulings used the same rationale to hold that certain devices were not classifiable as valves, i.e., the function of the devices was to control and monitor machines or mechanisms in which they were used. However, if

a device is a valve as defined in the tariff provision for valves and is not a machine or part of a machine which by design contains a valve in order to perform the control function, then the device should be classified under the *eo nomine* provision for valves.

Numerous Headquarters decisions classify valves under the provision for valves in items 680.20–680.28, TSUS (effective January 1, 1980, items 680.14–680.28 TSUS), whether or not the end use of the valves is in a brake system, a hydraulic pump or motor, or other machine. The provision for valves is an *eo nomine* provision, not a use provision. Therefore, articles which are known in trade and industry as valves, and which perform the function of controlling the flow of liquids, gases, or solids, are to be classified under the provision for valves.

Inasmuch as complete descriptive information is not available on the merchandise considered in ORR Ruling 207–70 and Headquarters ruling letter dated November 30, 1970 (file 007588), those rulings are limited to the facts in those cases. Furthermore, both of the above cases are clarified to the extent that the classification of merchandise known as valves is not determined by the end use of the valves. Unless the merchandise is by construction more than a valve or is a valve actuator it is classifiable as a valve.

Holding: The modular pressure and directional control valves, and generically comparable valves, which are designed for inclusion in hydraulic systems, are classifiable under the applicable provision for valves, in items 680.20–680.28, TSUS (for merchandise entered on or after January 1, 1980, in items 680.14–680.28, TSUS). The tariff classification of merchandise known in trade as valves and used to control the flow of liquids, gases, or solids, is not determined by the end use of the valves.

Effect on other rulings: ORR Ruling 207–70 (file 431.24, October 9, 1969) and Headquarters ruling letter dated November 30, 1970 (file 007588) are limited and clarified as noted above.

This ruling does not affect prior rulings concerning devices which appear to operate as valves but are, in fact, devices which divide or distribute fluids. For example, in P.R.D. 76–1 (file 094200) the "Delta control valve" segregates and distributes precise volumes of liquid to the desired number to output taps by the trivial operation of closing unneeded output taps. It divides the input flow into equal-volume outputs, and is properly classifiable in item 678.50, TSUS.

Similarly, the devices in Headquarters letter of May 5, 1977 (file 049194), October 26, 1977 (file 052492), and February 5, 1976 (file 042283), are distribution devices that serve to divert fluids rather than merely control the flow. These devices are more than valves and are not classifiable as valves.

(C.S.D. 81–125)

Vessels: Transportation, Use and Commingling of Fish Processing Supplies on Non-Coastwise-Qualified Vessels in Violation of 46 U.S.C. 883

Dated: November 13, 1980
File: RRUCDC
104874 JL

This ruling concerns the transportation and use of fish processing supplies on non-coastwise-qualified processing vessels.

Issues: May a foreign-built U.S. registered fish processing vessel take on board supplies to be utilized in freezing and processing fish at a point within U.S. territorial waters and unlade the processed fish products at another point in U.S. territorial waters without violating 46 U.S.C. 883?

Facts: A non-coastwise-qualified fish processing vessel intends to lade supplies such as salt, boxes, packaging materials and other items to be used or consumed in the processing of fish at one location within U.S. territorial waters (a coastwise point) and unlade fish products at another coastwise point. The inquirer asks whether the unlading of the fish products will violate 46 U.S.C. 883. The inquirer is of the opinion that the materials will undergo a substantial tranformation pursuant to General Headnote 6(b), TSUS, and therefore no violation will occur.

Law and analysis: 46 U.S.C. 883 prohibits the transportation of merchandise between two coastwise points by a non-qualified vessel.

The initial question presented is whether the subject processing supplies are "merchandise" within the purview of section 883. Headquarters case 103982, published as C.S.D. 80–46, held that such articles were not ship's equipment or stores. C.S.D. 80–46 also held that fish transported for any part of a coastwise movement on a non-coastwise qualified vessel are merchandise transported in violation of section 883. It then follows that both the fish and processing supplies in the factual situation presented are "merchandise" within the purview of section 883.

The second question presented is whether the transformation of the supplies, that is their commingling with the fish which are processed, packed, and unladed as fish products, will serve to change their status as merchandise for purposes of section 883. The General Headnote cited by the inquirer (6(b)) addresses the treatment to be accorded containers or holders for imported merchandise under the Tariff Schedules of the United States (TSUS). 46 U.S.C. 883 is not part of the TSUS and in no way addresses or conditions its application to articles transported in contravention thereof, or on their treatment as

imported merchandise. Accordingly, General Headnote 6(b) is not relevant to the determination of the issue presented.

A change in the condition of merchandise transported between two coastwise points is pertinent when the merchandise is landed and processed at an intermediate port or place other than a coastwise point. See section 4.80b(a), Customs Regulations, as amended July 19, 1979 (44 Fed. Register 140, page 42178). However, in the instant case there is no landing and processing at an intermediate port or place other than a coastwise point. Rather, the processing will occur on a vessel during the course of a continuous voyage between two coastwise points. Therefore the change in the condition of the merchandise transported is not determinative of the resolution of the issue.

Holding: Under the facts presented, fish processing supplies laded on a non-coastwise-qualified vessel at one coastwise point and subsequently utilized in the processing and packaging of fish into fish products which are unladed at a second coastwise point are transported in violation of 46 U.S.C. 883.

Effect on other rulings: Ruling 104080 amplified.

(C.S.D. 81-126)

Export Value: Termination Payment Forms Part of Constructed Value of Imported Aircraft

Dated: November 13, 1980
File: CLA-2:RRUCVC
542179 RP

To: District Director of Customs, St. Louis, Missouri 63105.
From: Director, Classification, and Value Division.
Subject: Request for internal advice no. 100/80.

The referenced Internal Advice request concerns the appraisement of certain aircraft imported from Great Britain. Between May 1972, and July 1975, the (importer) imported 21 aircraft which were manufactured by (exporter). The importer contracted with the exporter to purchase 41 aircraft pursuant to a collaboration agreement dated November 14, 1969, a marketing agreement dated April 1, 1970, and a purchase agreement dated September 29, 1972. On May 2, 1974, the parties executed a supplementary agreement which reduced the number of aircraft to be purchased by the importer from 41 to 21. One of the provisions of the supplementary agreement called for the payment of $2,500,000.00 from the importer to the exporter.

The issue raised in the Internal Advice request concerns whether or not the $2,500,000.00 payment forms part of the dutiable value of the 21 aircraft.

It is the position of your office that the $2,500,000.00 represents a payment for termination of the purchasing of aircraft by the importer, and that, as such, the termination payment forms part of the constructed value for the 21 aircraft actually imported. The payment would be amortized over the 21 aircraft which were imported. You indicate that it would not be unrealistic to assume that a contract reduction of 20 aircraft would reduce the usual wholesale quantities, and thus, raise individual prices. In the alternative, you cite Headquarters decision 541436, dated May 14, 1977, to support the dutiability of the termination payment.

It is the opinion of counsel for the importer that the $2,500,000.00 payment to the exporter does not form part of the dutiable value of the aircraft, since the termination payment was based on damages to the exporter for future production of the aircraft and in no way relates to the aircraft previously manufactured. Counsel mainains that the appraised value of the aircraft is to be determined on the date of exportation and should not be ascertained based on actions taken subsequent to the date of exportation. Accordingly, since all but three of the 21 aircraft were exported prior to the May 2, 1974, supplementary agreement, it is counsel's position that the supplementary agreement does not affect the entered values ascribed to the imported aircraft (the price for the three aircraft exported after the execution of the supplementary agreement was not changed by the agreement). In view of the above, counsel contends that the proper basis of appraisement for the 21 imported aircraft is export value, as reflected by the unit price established under the original purchase agreement.

After a careful review of the evidence presented, it is our opinion that the so-called "termination payment" does not form part of the dutiable value for the 21 aircraft actually imported. We agree with the Chief, Duty Assessment Branch I/II in New York that the supplementary agreement is not a termination agreement, but rather, a renegotiation of basic contracts. The salient provisions of the supplementary agreement include a reduction in the number of aircraft which the importer was required to purchase, an agreement to repurchase unsold airframe spares, and an option to purchase 10 additional aircraft at a higher price. The payment in question was mutually agreed upon by the parties as consideration for the supplementary agreement.

Although not expressly stated in the supplementary agreement, we believe that the $2,500,000.00 payment was based on damages to the exporter for future production and does not relate to the 21 aircraft actually imported. It is not uncommon for parties to a contract to renegotiate agreements and arrange for the payment of damages where one of the parties wishes to amend or terminate previous agreements. Failure to renegotiate could subject the breaching party to suit, as

well as impair or destroy the business relationship between the contracting entities.

It is also our opinion that Headquarters ruling 541436, dated May 14, 1977, is not applicable in the instant case. In that decision, Headquarters determined that a payment pursuant to a termination clause of a contract formed part of the constructed value of certain imported steel tower material. However, in the steel tower case, the termination payment clause was executed as part of the original purchase agreement prior to importation. In the instant case, the contract for the payment of $2,500,000.00 was made 2 years after the original purchase agreement and after all but three of the subject 21 aircraft had been exported to the United States.

In addition, we note that the instant transactions took place between a selected purchaser, and an unrelated seller, whereas the steel tower case involved related party transactions. In the case of *International Armament Corporation*, v. *United States*, 83 Cust. Ct.—C.D. 4827 (1979), the Customs Court held that prices paid by a selected purchaser to a wholly unrelated seller should be accepted as fairly reflecting market value, in the absence of any indication that the prices were, in any manner, contrived or rigged, or that the dealings were not at arm's length and bona fide in all respects. In the case before us, we find nothing in the record which warrants a conclusion that the subject transactions were not at arm's length or bona fide, and it is our position that the $2,500,000.00 payment is not attributable to the original purchase price of the 21 aircraft actually imported.

Accordingly, we conclude that the payment does not form part of the dutiable value of the 21 aircraft. Also, it is our opinion that export value represents the proper basis of appraisement for the subject merchandise, as reflected by the original contract purchase price, provided that all elements of value are included in that price.

(C.S.D. 81–127)

Bonds: Cancellation of TIB When Photos Processed From Imported Film Have Been Destroyed

Dated: November 14, 1980
File: CON–9–RRUCDB
211531 MM

Issues: 1. Whether a temporary importation bond (TIB) may be cancelled based on a certificate of destruction by a company to the district director if the company does not maintain records that would support such destruction.

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2. Whether a company may base its certificate of destruction on the fact that items are not physically on hand and therefore were destroyed.

3. When pictures taken to test film packs are maintained for 1 year is the film considered destroyed when the film is exposed or when the photographs are disposed of 1 year later?

4. Whether TIBs may be cancelled by substituting the same type of item imported under various TIBs on a FIFO basis.

Facts: A variety of photographic equipment, including film, was imported under item 864.30, Tariff Schedules of the United States, for durability and quality testing. Records are not maintained to allow specific identification of the imported materials entered under TIB so that the destroyed or exported articles can be traced back to a particular TIB. Most of the imported articles are destroyed after reliability testing by reducing the articles to scrap and dumping the scrap in a landfill site. The company then submits a letter to Customs certifying that the articles were destroyed in testing and are being reduced to scrap.

Those items that are not destroyed are exported. However, since no records are maintained identifying which particular TIB covers any one item being exported an export shipment may cover items imported under more than one TIB.

The film is imported for quality control testing to ascertain if the film details the proper colors. When the film comes into the receiving area the date is written on the carton. A majority of each shipment is used in taking pictures immediately and a small portion is put in storage as part of a 6-month aging process to be used at the end of that period. Both the initial photos taken and the photos taken at the end of the 6-month period are each kept for 1 year at which time they are further examined to determine if the colors have faded before disposal. Although no direct identification can be made between the imported entered under TIB and the actual film used in testing, the company contends that the film has been destroyed in testing since there are no film packs on hand at the end of the 6-month period.

Law and analysis: Section 10.39(a) of the Customs Regulations provides in part as follows:

> . . . In the case of articles entered under item 864.30, Tffari Schedules of the United States, which are destroyed because of their use for the purposes of importation, the bond shall not be cancelled unless there is submitted to the district director a certificate of the importer that the articles were destroyed during the course of a specifically described use, and the district director is satisfied that the articles were so destroyed as articles of commerce within the bond period (including any lawful extension.) . . .

In the case of *American Gas Accumulator Co.* v. *United States*, T.D. 43642, 56 Treas. Dec. 368 (1929), the Customs Court held that for the purpose of cancelling temporary importation bonds, the term "destroyed" means that the articles imported no longer are articles of commerce. "In other words, if articles were destroyed to such an extent that they were only valuable in commerce as old scrap they still would be articles of commerce to which duty attaches upon importation, and therefore, could not be said to have been destroyed." In view of this we have held that scrap could be considered destroyed as an article of commerce, by burying it under Customs supervision in a landfill since the cost of extracting the scrap would exceed its value.

Because the photographic equipment has not been destroyed as an article of commerce during the testing operation but is in fact destroyed when buried in the landfill, the bond cannot be cancelled by the submission of a certificate of destruction.

If the facts were that the articles were destroyed in testing and a certificate of destruction were applicable, the district director would still have to be satisfied that the destruction took place and occurred within the bond period. Without supporting documentation, the fact that the items are not physically on hand is not conclusive evidence that the articles were destroyed properly and within the bond period.

Concerning when destruction occurs to the film, the film is actually used (not destroyed) when the photos are taken. It appears the testing is made on the film product (photos) and not the film itself. Under these circumstances because the photos must be made to test the quality of the color, the film should have been entered under item 864.05, TSUS, for processing into photos for subsequent testing under item 864.30, TSUS. The TIB could then be cancelled upon destruction of the photos under Customs supervision.

With regard to the issue of cancelling the TIBs on a FIFO basis by substituting like merchandise admitted under any TIB the Customs Service has not required direct identification if the importer could show that the imported fungible merchandise was not commingled with domestic articles and that all articles imported were properly exported by identifiable lot number.

Holding: 1. A certificate of destruction is applicable only when the imported merchandise has been destroyed as an article of commerce *in the course of the testing operation* (*emphasis added*).

2. When certificates of destruction are applicable they must be supported by satisfactory evidence that the articles were destroyed properly within the bond period.

3. For TIB purposes, film may be considered destroyed when the

photos processed from the film have been destroyed either in the testing process, or subsequent to it under customs supervision.

4. Cancellation of TIBs on a FIFO basis is acceptable if the importer can show that the imported merchandise has not been commingled with domestic merchandise and all imported articles have been exported properly by identifiable lot number.

(C.S.D. 81–128)

Value; Export: Inland Freight Charges Included in Appraised Export Value of Merchandise

Date: November 17, 1980
File: CLA–2–RRUCV
065064 CW

Re Application for Further Review, Protest No. 0401–9–000525.
DISTRICT DIRECTOR OF CUSTOMS,
Boston, Massachusetts.

DEAR SIR: The issue involved in the above-referenced protest concerns whether the appraised value of the merchandise at issue should include the cost of inland freight from the factory in France to the port of shipment.

The record reveals that the merchandise (glass fibers) encompassed by the four entries subject to this protest was sold by (Importer) to the protestant (Protestant Importer) on a C&F basis. The merchandise was entered and appraised at invoiced unit values less nondutiable charges which included only the cost of ocean freight. Export value, section 402(b) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956, was determined to be the proper basis of appraisement. While the importer is related to the seller, we have no reason to believe from the record that the importer is a selected purchaser.

The protestant maintains that as the seller, (Importer) sold similar merchandise on an ex-factory basis to (Importer), during the same time period as the sales of the subject merchandise to (Importer) appraisement should be at invoiced unit values less ocean freight and inland freight charges. In support of its contention, protestant has submitted a copy of a letter from the seller which indicates that sales at ex-factory prices were made to (Importer) during the period February to June, 1978. The national import specialist in New York confirms that commencing February 21, 1978, shipments of similar merchandise from (Importer) were exported to ———— a non-related importer, at ex-factory terms.

Since inland freight charges from the factory or the principal market to the port of exportation are expenses which generally accure after the merchandise is packed and ready for shipment to the United States, such expenses are not *ordinarily* held to be a part of export value. *United States* v. *Lyons*, 13 Ct. Cust. Appls. 639, T.D. 41484 (1926), *Albert Mottola* v. *United States*, 46 CCPA 17, C.A.D. 689 (1958). However, inland freight charges have been held frequently by the courts to be part of dutiable export value where those charges are always included in the selling price of the merchandise. *Plywood & Door Northern Corp.* v. *United States*, 62 Cust. Ct. 1044, A.R.D. 256 (1969). Thus, as stated by the Court in *Aceto Chemical Co., Inc.* v. *United States*, 51 CCPA 121, C.A.D. 846 (1964):

> . . . if there is no other price than the one which includes the freight charges, then under settled law, the freight charge is inextricably bound up as an integral part of the purchase price and may not be allowed.

In order to ascertain whether inland freight charges are bound up in the value of the merchandise to be appraised, the appraising officer should determine if purchasers have a *bona fide* option to buy ex-factory without the inclusion of such charges.

Before applying the foregoing principles to the facts of this case, we should note that the shipments which are the subject of this protest were exported from France on the following dates:

Entry No.:	*Date of export*
131931	December 30, 1977.
129464	February 4, 1978.
160523	June 19, 1978.
140664	March 4, 1978.

The essential question to be answered is whether, at the above-stated times of exportation of the subject merchandise, purchasers had a *bona fide* option to purchase at ex-factory prices. The national import specialist recommends appraisement at ex-factory terms only with respect to the two shipments which were exported after February 21, 1978, on the grounds that prior to that date the Customs Service had no evidence of freely offered ex-factory terms.

We are in agreement with the national import specialist. As a general rule, sales or offers for sale subsequent to the date of exportation of the merchandise undergoing appraisement cannot be used to establish export value. *Spanexico, Inc.* v. *United States*, 75 Cust. Ct. 123, C.D. 4616 (1975). Consequently, since we have no evidence that ———— sold or offered to sell at ex-factory prices at the times of exportation of the merchandise covered by Entry Nos. 131931 and

129464, we have no alternative but to hold that the dutiable export value of this merchandise includes inland freight charges.

However, as a result of the ex-factory sales to ———— we are satisfied that a *bona fide* option to buy at ex-factory prices did exist at the times of exportation of the merchandise covered by Entry Nos. 160523 and 140664. These two entries, therefore, should be reliquidated with appraisement at invoiced unit values less ocean freight and inland freight charges.

In accordance with the above discussions, you are directed to grant the protest in regard to Entry Nos. 160523 and 140664 and deny the protest in regard to Entry Nos. 131931 and 129464. Your file is returned.

(C.S.D. 81–129)

Classification: Qualified Authorization for Classification in Item 807.00, TSUS, of Certain Bra Straps Imported Into the U.S. on an Aggregate Basis

Dated: April 6, 1981
File: CLA–2 CO:R:CV
068013 JR

Your letter of December 23, 1980, appeals our ruling to you dated November 18, 1980 (CLA–2:R:CV:MSP, 063041 HDB). This ruling held that tariff treatment under item 807.00 of the Tariff Schedules of the United States (TSUS) could not be authorized on an aggregated basis with respect to certain bra straps present in finished bras imported by your client, (corporate name)

BACKGROUND

The information contained in your letter of December 23, 1980, and in your earlier submission dated April 25, 1979, indicates that (name) imported during the period between June 1972 and January 1975, approximately 2.02 million dozen bras assembled at plants located in Costa Rica, Honduras, and Jamaica. Of the straps involved in the assembly of the bras, approximately 1.5 million dozen pairs (the "A" straps) were either made in the United States and shipped abroad for assembly with other bra parts, or were themselves assembled abroad from U.S. components and then assembled with other bra parts into finished bras. The remaining bra straps, some 520,000 dozen pairs (the "B" straps), had been assembled in Costa Rica from U.S. components, returned to the U.S. under item 807.00, TSUS, and then reexported for assembly with other bra parts into finished bras.

When the finished bras were imported into the U.S., (name) claimed

item 807.00, TSUS, treatment for all of the bra straps involved. It does not appear that any attempt was made by (name) at the time of the entry of the bras to distinguish between the "A" straps and the "B" straps or to specify the amount of either variety included in each entry.

A penalty action was initiated by Customs against (name) in 1976, in connection with the importation of the bras described above. One of the issues involved in the penalty action was the applicability of item 807.00, TSUS, to the bra straps. Although item 807.00, TSUS, treatment was originally claimed for all of the bra straps, (name) now acknowledges that the "B" straps do not qualify as U.S. components for purposes of item 807.00, TSUS, and, consequently, that a duty allowance cannot be claimed under that provision for the "B" straps. However, it continues to be (name) position that the "A" straps are entitled to item 807.00, TSUS, treatment notwithstanding the fact that the quantity of "A" straps present in each of the entries involved cannot be specified. (name) contention is based upon the application of the item 807.00, TSUS, provisions on an "aggregate" basis—that is, treating all of the entries involved as a whole, rather than individually.

A request for a ruling permitting the application of item 807.00, TSUS, to the "A" straps on an aggregated basis was contained in your letter to this office, on behalf of (name) dated April 25, 1979. Our response, dated November 18, 1980, held that the aggregated approach advocated by (name) failed to satisfy a basic condition of item 807.00, TSUS—that U.S. components be present in each entry for which a duty allowance under that provision is claimed.

DISCUSSION

In your letter of December 23, 1980, which appealed our ruling of November 18, 1980, you argue that, because of the absence of legislative history or judicial decisions specifying the manner in which Customs is to determine the quantity and value of the U.S. components in the articles presented for entry under item 807.00, TSUS, Customs has the discretion to use the aggregated approach so long as the substantive requirements of item 807.00, TSUS, are satisfied. You also argue that the use of the aggregated approach is consistent with modern business and accounting practices and, in (name) situation, would fully protect the revenue.

DETERMINATION

After careful reconsideration of your letters of April 25, 1979, and December 23, 1980, we have decided to permit the application of the provisions of item 807.00, TSUS, to the "A" straps on an aggregated

basis. The use of the aggregated approach with respect to the entries in question will be conditioned, however, on the furnishing by (name) of such information as may be required by Customs to establish conclusively the quantity and origin of the "A" straps, as well as such other information as may be required to assure the full protection of the revenue.

Subject to the satisfaction of the foregoing conditions, our ruling of November 18, 1980, is reversed.

(C.S.D. 81–130)

Foreign Trade Zones: Several Issues Relating to Color Television Sets Manufactured in U.S.; Manufactured Abroad and Imported into the U.S.

Date: December 12, 1980
File: FOR–1–RRUCDB L 210902

Issues: Several issues are raised relating to (1) color television sets (CTVs) manufactured in the United States, and (2) CTVs manufactured abroad and imported into the United States. With respect to the domestically manufactured CTVs,

1. May such CTVs be taken into a foreign-trade zone (FTZ) for exportation upon application by the manufacturer?

2. May such "zone-restricted" CTVs be sold at wholesale in the FTZ by the manufacturer to an unrelated third party or parties?

3. After CTVs having zone-restricted status have been "exported" to a foreign country, may they be returned to Customs territory for domestic consumption?

With respect to CTVs manufactured aborad,

1. May such CTVs acquire zone-restricted status and, if so, may the status be acquired by the importer entering them into bonded warehouse without payment of duty and then transferring them to a FTZ for exportation?

2. Do the answers to questions 2 and 3 relating to domestically manufactured CTVs apply equally to imported CTVs?

3. May the zone-restricted foreign merchandise (CTVs manufactured abroad) be transferred from the FTZ to a Customs bonded warehouse for exportation and be exported directly from such warehouse?

Facts: No specific factual situation is submitted.

Law and analysis: Addressing first the issues related to CTVs manufactured in the United States, 19 U.S.C. 81c provides in part that "(F)oreign and domestic merchandise of every description . . .

may . . . be brought into a zone . . . except as otherwise provided in this chapter . . .". Section 146.11, Customs Regulations (19 CFR 146.11), similarly provides that "(M)erchandise of every description . . . may be brought into a zone unless prohibited by law . . .". Accordingly, CTVs manufactured in the United States may be admitted into a FTZ upon proper application.

The fourth proviso of 19 U.S.C. 81c provides in part: "That under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from Customs territory for sole purpose of exportation . . . shall be considered exported for the purposes of"—

> (a) the drawback, warehousing, and bonding, or any other provisions of the Tariff Act of 1930, as amended, and the regulations thereunder; and
>
> (b) the statutes and bonds exacted for the payment of drawback, refund, or exemption from liability for internal-revenue taxes and for purposes of the internal revenue laws generally and the regulations thereunder.

Section 146.25(a), Customs Regulations (19 CFR 146.25(a)), provides that:

> Articles taken into a zone from Customs territory for the sole purpose of exportation, destruction . . . or storage shall be given zone-restricted status upon proper application. Such articles may not be returned to Customs territory except when the Board deems such return to be in the public interest.

It is clear that under 19 U.S.C. 81c domestic merchandise may be taken into a FTZ for exportation or any other purpose set out in that section. The inquirer states that zone-restricted status will be requested for the CTVs admitted to the FTZ since they will be admitted for the sole purpose of exportation. There is no indication in the submission that zone-restricted status will be requested for any of the purposes in subparts (a) and (b) of the fourth proviso of 19 U.S.C. 81c, noted above. Nevertheless, we see no reason why zone-restricted status should not be granted upon proper application.

Zone-restricted CTVs may be sold at wholesale in the FTZ to unrelated third parties. As previously noted, 19 U.S.C. 81c provides that "(F)oreign and domestic merchandise . . . may be . . . sold . . . except as otherwise provided in this chapter". The only restriction on sales in a FTZ is found in 19 U.S.C. 81o(d) which provides that no retail trade shall be conducted within a FTZ except under permits issued by the grantee and approved by the Board.

The third issue is whether domestically manufactured CTVs with zone-restricted status may be returned to Customs territory for consumption after being exported from the FTZ to a foreign country.

347-181 O - 81 - 6

An exportation has been defined by the courts as "a severance of goods from a mass of things belonging to this country with an intention of uniting them with a mass of things belonging to some foreign country". 17 Op. Atty, Gen, 579 (1883). See also *Swan & Finch Company* v. *United States*, 190 U.S. 143 (1903); *F. W. Myers & Company Inc.* v. *United States*, 29 Cust. Ct. 202 (1952), C.D. 1468; and *United States* v. *National Sugar Refining Company*, 39 C.C.P.A. 96 (1951), C.A.D. 470.

The inquirer submits the CTVs may not be returned to Customs territory after having been exported to a foreign country citing the Senate Finance Committee Report (S. Rept. 1107) when the fourth provisio to section 3 of the Foreign-Trade Zones Act was being considered in 1949, *United States* v. *National Sugar Refining Company*, *supra*, and section 146.47, Customs Regulations (19 CFR 146.47).

The inquirer does not state whether the domestic CTVs placed in the FTZ with the status of zone-restricted are placed there for one of the purposes set out in the fourth proviso of 19 U.S.C. 81c. We have been orally informed by the inquirer that the merchandise would qualify for readmission to the customs territory under the known standards of any agency and would not be placed in the FTZ in zone-restricted status to avoid any liability or the laws or regulations of any agency.

It is our opinion that zone-restricted articles exported from a FTZ to a foreign country may be returned to Customs territory upon compliance with applicable law and regulations. The pertinent language of the fourth provisio of 19 U.S.C. 81c provides that articles "shall be considered to be exported" for the purposes stated thereunder. The statute grants a special benefit to users of a FTZ upon condition that articles placed in the FTZ for one of the purposes stated in the fourth proviso to 19 U.S.C. 81c are not returned from the FTZ to Customs territory without the approval of the Foreign-Trade Zones Board. It does not otherwise alter the concept of "exportation" as set out in 17 Op. Atty. Gen. 579, and consistently followed by the courts and the Customs Service.

The second part of the request relates to CTVs manufactured abroad and exported to the United States. The first question asks whether imported CTVs may acquire zone-restricted status and, if so, may the status be acquired by the importer entering them into a Customs bonded warehouse and then transferring them to a FTZ for exportation.

Section 146.25(d), Customs Regulations (19 CFR 146.25(d)) provides that merchandise entered for warehousing and transferred to a FTZ, other than temporarily for manipulation and return to Customs

territory as provided for in section 146.13, shall have the status of zone-restricted merchandise when admitted into the FTZ.

The second question asks whether the answers to questions 2 and 3 relating to CTVs manufactured in the United States apply equally to imported CTVs. They do apply equally to domestic and imported merchandise noting, however, that our answer to the third question is general absent specific information on the purpose of placing the CTVs in the FTZ with the status of zone-restricted.

The third question asks whether zone-restricted CTVs may be transferred from the FTZ to a Customs bonded warehouse for exportation and exported directly from such warehouse.

The Customs Regulations currently permit such a transfer only when the Foreign-Trade Zones Board rules that it would be in the public interest. The procedure is set forth in sections 146.25(d) and 146.47(a), Customs Regulations (19 CFR 146.25(d) and 146.47(a)). The Customs Service has taken the position that such transfers should be allowed in a letter dated August 11, 1978 (FOR–1–02–R: CD:D S, 209110), and, on the same date, proposed amendments to the Customs Regulations for this purpose. However, the amendments have not yet been approved.

Holding: The holdings on the several issues, in the order presented, are as follows:

CTVs Manufactured in the United States

1. CTVs manufactured in the United States may be admitted into a FTZ for exportation and may be granted zone-restricted status upon proper application.

2. CTVs manufactured in the United States, and admitted to the FTZ with zone-restricted status may be sold at wholesale in the FTZ to an unrelated third party or parties.

3. Merchandise in a FTZ with zone-restricted status is considered to be exported only for the purposes set out in the fourth proviso of 19 U.S.C. 81c. Without specific information as to the purpose of placing the CTVs in the FTZ with zone-restricted status we are unable to rule whether, upon subsequent exportation to a foreign country, they may be returned to the Customs territory for consumption. In general, however, merchandise exported from a FTZ, whether with zone-restricted status or not, may be returned to the Customs territory upon compliance with applicable law and regulations.

CTVs Manufactured Abroad and Exported to the United States

1. CTVs manufactured abroad and exported to the United States may acquire zone-restricted status and may do so by being entered into a Customs bonded warehouse and then withdrawn for transfer to a FTZ for exportation.

2. The answer to issue 2 relating to CTVs manufactured in the United States applies equally to CTVs manufactured abroad

and exported to the United States. The answer to issue 3 relating to CTVs manufactured in the United States applies equally to CVTs manufactured abroad and exported to the United States insofar as no specific reason for the transfer to a FTZ with zone-restricted status is given. If the CTVs are transferred to a FTZ with zone-restricted status solely for compliance with the warehousing provisions of the Tariff Act of 1930, as amended, they may be returned to the Customs territory of the United States upon compliance with applicable law and regulations following an exportation from the FTZ to a foreign country.

3. Under existing regulations, zone-restricted merchandise may not be transferred from the FTZ to a Customs bonded warehouse for exportation. The Customs Service has proposed amendments to the Customs Regulations to permit a transfer for this purpose; however, the proposed amendments have not been approved.

(C.S.D. 81–131)

Drawback: Substitution of Domestic Reconstituted Tobacco Scrap for Flue-cured Scrap Tobacco

Date: November 20, 1980
File: DRA–1–RRUCDB
211224 NK

Issue: Whether reconstituted tobacco scrap is of the same kind and quality as flue-cured scrap tobacco or Burley scrap tobacco for substitution drawback purposes.

Facts: Reconstituted tobacco is described as a product manufactured entirely of tobacco materials consisting of whole tobacco stems of the flue-cured and Burley types, tobacco stem scrap, tobacco dust and fines. The materials are manufactured into sheet form with water used to dissolve the binders that occur naturally in tobaccos to allow the tobacco fibers to be arranged into a base sheet. After the tobacco fiber base sheet has been formed, the binders that have been extracted by the water are concentrated by removing the water added. The concentrated extract, in turn, is impregnated into the fiber base, or web, and acts as the binder of the whole, making a sheet of pure tobacco ingredients.

Reconstituted tobacco is also known as Homogenized Tobacco Leaf. This product is defined as; "Tobacco sheet made from scrap leaf, whole leaf, and some stems, ground finely and made into a paste. The process is patterned after paper making."

Reconstituted tobacco sheet is used as a substitute for natural cigar binders and wrappers.

A processor proposes to substitute domestic reconstituted sheet tobacco cut into scrap form for imported flue-cured scrap tobacco or

Burley scrap tobacco for use in the production of cigarettes for drawback.

Law and analysis: The substitution drawback law (19 U.S.C. 1313(b)) requires that imported designated merchandise and the domestic substituted merchandise used to produce articles for drawback must be of the same kind and quality.

The regulations of the United States Department of Agriculture (7 CFR, parts 30 and 29) define classes and types of tobaccos and set forth standard grades. These regulations are useful guidelines in assisting the Customs Service in determining the same kind and quality questions for the substitution of domestic tobaccos for imported tobaccos under the drawback law. In applying these standards, the Customs Service gave notice on January 30, 1980 (T.D. 80–57) that it had ruled that imported and domestic flue-cured scrap tobaccos as defined in 7 CFR 29.1169, used to produce cigarettes, were of the same kind and quality for substitution drawback. We also ruled that imported and domestic Burley scrap tobaccos as defined in 7 CFR 29.3157, used to produce cigarettes, were of the same kind and quality for substitution drawback. However, we did not rule that flue-cured scrap tobacco and Burley scrap tobacco were of the same kind and quality. Llkewise, we are of the opinion that reconstituted tobacco in scrap form as described above is not of the same kind and qualtiy as flue-cured scrap tobacco (7 CFR 29.1169) or Burley scrap tobacco (7 CFR 29.3157) for substitution drawback.

Holding: Reconstituted sheet tobacco in scrap form is not of the same kind and quality as flue-cured scrap tobacco or Burley scrap tobacco for substitution drawback.

Alternative: The Customs Service would consider a drawback proposal to substitute domestic reconstituted sheet tobacco in scrap form for imported designated reconstituted sheet tobacco in scrap form for use in the production of cigarettes for drawback. Specifications should be included in the proposal to show same kind and quality.

(C.S.D. 81–132)

Vessels: Treatment of Lightering Vessels Carrying Alaska North Slope Crude Oil

Date: November 24, 1980
File: VES–5–02–RRUCDC
104526 DR

To: Regional Commissioner of Customs, Houston, Texas 77002.
From: Chief, Carrier Rulings Branch.

Subject: Customs Treatment of Vessels Carrying Alaska North Slope Crude Oil—Your Memorandum ENT–1–01–0:I EJG (February 29, 1980).

This ruling, in response to the subject memorandum, is concerned with the reporting requirements for lightering vessels arriving with Alaska North Slope (ANS) crude taken on board in the Gulf of Mexico from vessels which had laded the crude at an onshore facility in Panama.

Issue: Whether U.S.-registered vessels which lighter ANS crude from tankers which transport the crude from storage facilities in Panama to a point in the Gulf of Mexico are required to report their arrival and present a manifest at United States ports of destination.

Facts: ANS crude is being transported from an onshore facility in Puerto Armuelles, Republic of Panama, to a point approximately 90 miles off the United States coast in the Gulf of Mexico by U.S.-registered VLCC's. The ANS crude then is lightered to U.S. ports by U.S.-registered lightering vessels.

Law and analysis: Vessels transporting to the United States crude laded in Panama are required to report arrival and enter at their port of destination as required by title 19, United States Code, sections 1433 and 1434. Reporting arrival and merely presenting a manifest, as stated in your memorandum, does not fulfill the requirements of section 1434.

The general rule is that vessels which are in the coastwise trade are not subject to Customs entry and clearance formalities, as the activity takes place entirely within the United States, its territories, or possessions. However, the transportation of crude from Alaska to the Gulf or Atlantic coast of the United States is an exceptional case; i.e., the crude of necessity must be transshipped via a foreign facility in order to be transported through the Panama Canal, and its arrival on the Gulf or Atlantic coast must be verified for the Department of Commerce. In addition, Customs must be satisfied that the crude originated in Alaska. With respect to lightering vessels, Customs and Department of Commerce requirements can be complied with most readily by reporting arrival and presenting a manifest.

We note that the specific question posed by this inquiry is not addressed in Manual Supplement 3250–02, June 24, 1980, "Customs Control of Petroleum Product Importations," the subject of Policy Statement 3200–04 of the same date.

Holding: Lightering vessels which take on ANS crude on the high seas from United States-flag vessels which transported the crude from onshore storage facilities in the Republic of Panama are required

to report arrival and produce manifests at each port of discharge—the port of first arrival and subsequent ports. This must be accomplished within 24 hours of arrival even though formal entry is not required.

(C.S.D. 81–133)

Classification: Proper Tariff Classification of Animal Feed Wheat Gluten and Wheat Gluten for Human Consumption

Date: November 26, 1980
File: CLA–2:RRUCGC
065548 JH

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Appropriations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: With your letter of October 30, 1980, you submitted an additional statement from (name of corporation) a domestic producer of a wheat gluten, concerning the problems created by the new tariff item 184.58, Tariff Schedules of the United States (TSUS), wheat gluten to be used as animal feed. While the current rate of duty on this item is 9.3 percent ad valorem, unlike the regular wheat gluten provision, the rate for which is only reduced by 2 percent over the next 6 years, the animal wheat gluten item is subject to staged-rate reductions which will eventually reduce the rate to 4 percent. Since there is no difference in the wheat gluten used for animal feed and that used for human food (name) fears importers will use the animal feed provision, regardless of the product's intended use, in order to obtain the lower duty rate.

As we explained to you in our letter of September 29, 1980, Customs has no authority to require that animal feed wheat gluten be decharacterized or that importers entering the gluten under item 184.58 prove within 1 year that the product was, in fact, used in animal feed. Under the law, the importer has 3 years after entry of an article to prove that it was used as claimed at importation. However, we will act on your suggestion to alert Customs officials at the various ports to the problems involved.

It is noted that since the administrative remedies are regarded by (name) to be somewhat limited in what they can accomplish, perhaps the most effective means for solving the problem would be to qualify the provision in question by legislative means.

If we can be of any further assistance in this matter, please do not hesitate to call on us.

(C.S.D. 81–134)

Classification: CXL–2000, A Chemical Product From England

Date: December 1, 1980
File: CLA–2:RRUCGC
061049 JH

Re Decision on Application for Further Review of Protest No. 1001–8–012193. This decision concerns Protest No. 1001–8–012193 filed on October 3, 1978, regarding CXL–2000, a chemical product from England.

AREA DIRECTOR OF CUSTOMS,
New York Seaport,
New York, New York

Facts: The merchandise at issue, a chemical product from England, is called CXL–2000. It consists of a synthetic rubber (fluoroelastomer), a non-benzenoid synthetic plastics material (polytetrafluoroethylene or PTFE), carbon black and litharge in non-benzenoid organic solvents. The product is used as a protective coating for chimney liners and the flue ducts.

The Customs Service classified the merchandise as a mixture in item 432.00, Tariff Schedules of the United States (TSUS), with the rate for the PTFE component in item 445.50, TSUS.

The protestant contents that the merchandise is a synthetic rubber classifiable in item 446.15, TSUS.

Issue: The tariff classification of CXL–2000.

Law and analysis: Schedule 4, Part 4, Subpart B, Headnote 2, TSUS, defines the term "rubber":

> The term "*rubber*" means a substance, whether natural or synthetic, in bale, crumb, powder latex or other crude form, which can be vulcanized or otherwise cross-linked, and which after cross-linking can be stretched at 68 degrees F. to at least 3 times its original length and which, after having been stretched to twice its original length and stress removed, returns within 5 minutes to less than 150 percent of its original length, and includes such substance whether or not containing fillers, extenders, pigments, or rubber-processing chemicals.

Headnote 2, Part 9C, Schedule 4, TSUS, defines "paints and enamel paints" as dispersions of pigments or pigment-like materials with a liquid (vehicle) which are suitable for application to surfaces as a thin layer, and which dry (harden) to an opaque, solid film. The vehicle of paints consists of drying oils or resins which bind the pigment particles together in the film. Paints and enamel paints may also contain thinners driers, plasticizers, or other agents.

The product in this case is described as a fluoroelastomer composi-

tion that is used to coat chimney liners and flue ducts to provide protection against corrosive gases and fly ash abrasion. CXL–2000 is not a crude synthetic rubber, but rather a finished product ready for final application. It is a mixture of synthetic rubber, a non-benzenoid synthetic plastics material (PTFE), carbon black, and litharge in a non-benzenoid organic solvent. CXL–2000 is mixed with a vulcanizing agent immediately before use and is applied by spraying to form a corrosion resistant coating for industrial chimneys.

Holding. The subject merchandise, having undergone various manufacturing processes, is a finished product with a dedicated use, and this dedicated use is as a paint. CXL–2000 is classifiable under the provision for paints not containing titanium pigments in item 474.30, TSUS, dutiable at 3.9 percent ad valorem.

(C.S.D. 81–135)

Subject: Licensing: U.S. Customs Service Employees Taking the Qualifying Examination for Customhouse Broker's License

Date: December 1, 1980
File: BRO–3–02 RRUEE
713404 JB

This ruling concerns U.S. Customs Service employees taking the examination qualifying persons for an individual customhouse broker's license.

Issue: What is the period of time successful completion of the customhouse broker's examination remains valid for U.S. Customs Service employees who do not terminate their employment or retire?

Law and analysis: An officer or employee of the United States may not be licensed as a customhouse broker (19 CFR 111.11 (a)(1)). While employees of the U.S. Customs Service may take and successfully pass the customhouse broker's examination, a customhouse broker's license will not be granted to a Customs employee passing the examination until his service with the United States is terminated. If an inordinate period of time intervenes between the passing of the examination and the date on which the employee terminates his employment with the government, there is legitimate concern that he or she will not remain fully conversant with tariff laws, Customs Regulations, and procedures not within his area of specialization. However, in our view, a Customs employee who passes the broker's examination and continues to work for Customs should remain sufficiently familiar with customs laws, other agency laws which Customs assists in enforcing, and procedures so as to justfy considering a grade on the examination to be valid for at least 5 years.

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It should be noted, however, that an individual outside the Customs Service who achieves a passing grade on the examination, but subsequently refuses to cooperate with Customs when it investigates the applicant to verify his or her qualifications, may have his or her application denied on that basis. The individual would then have to file a new application and take the examination again if he or she later decided he or she did wish to obtain a customhouse broker's license (BRO 3–02, RRUEE, dated April 22, 1980, 712498).

Finally, it is noted, anyone considering a move from government employment to the private sector should be aware of the restrictions contained in 18 U.S.C. 207 as amended by the Ethics in Government Act of 1978. A former Customs employee who intends to handle customs business in the future should be cognizant of these limitations. For most employees this would require that he avoid post-employment involvement in matters he "personally and substantially" participated in or in matters under his former "official responsibility," although "Senior Employees" are restricted to a greater extent.

Holding: An employee of the U.S. Customs Service may apply for a customhouse broker's license and take the qualifying customhouse brokers' examination. An employee successfully passing the examination does not qualify for a broker's license until employment by the U.S. Government is terminated. If 5 or more years elapse between the date a Customs employee is notified he passed the examination and the date he terminates his employment, his license application will be considered as withdrawn and he will be required to apply for a broker's license and successfully complete another brokers' examination before being licensed.

(C.S.D. 81–136)

Vessel Repair: Petition for Relief From Payment of Vessel Repair Duties

Date: December 4, 1980
File: VES–13–18 RRUCDC
104790 JL

This ruling concerns a petition for relief from payment of vessel repair duties filed under section 4.14(k), Customs Regulations.

Issue: Was the labor necessary to make repairs on the vessel performed by a "resident of the United States" within the meaning of 19 U.S.C. 1466(d)(2), so as to qualify for remission of duties?

Facts: In December 1979, the American-flag vessel (vessel name) had repairs performed to it in Singapore. The agent for the vessel owner claims that certain of the costs invoiced to the vessel are not

dutiable because those items cover the time and expenses of a field engineer who is a U.S. citizen.

Law and analysis: Section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466(d)(2)), allows remission of duties for necessary repairs on American-flag vessels—if the owner or master of such vessel furnishes good and sufficient evidence that—

> (2) such equipment or parts thereof or repair parts or materials, were manufactured or produced in the United States, and the labor necessary to install such equipments or to make such repairs was performed by residents of the United States, or by members of the regular crew of such vessel; . . . .

An analysis of the field report supplied with the petition discloses that the field engineer in question went aboard the vessel to investigate a problem with the 1000 KW General Electric turbo set. The problem was found to have been caused by dirt, rust and steel chips which found their way into the trip throttle valve operating cylinder. Except for a small basket screen which was installed in the system before it was refitted, it does not appear that any parts were utilized in the repair of the vessel.

The word "resident" has many meanings in law, largely determined by the statutory context in which it is used. *Kelm* v. *Carlson*, 473 F. 2d 1267, 1271 (1973). The text of present section 466(d)(2) was added to section 3115 of the Revised Statutes when section 466 of the Tariff Act of 1930 was enacted and remains unchanged. The legislative history reveals that the amendment was made to accommodate companies which sent their workers and materials to nearby ports in Canada to repair American-flag vessels berthed there. The workers returned to their residences in the United States at the end of each work day. They worked only on American-flag vessels.

We take notice of the fact that American personnel are frequently flown to foreign locations to perform repairs on specific American-flag vessels. Within the context of section 466, which has as its purpose the protection of American shipyards and labor, such persons are "residents of the United States" within the meaning of section 466(d)(2), provided they are assigned work on a specific American-flag vessel and return to the United States upon completion of their work on that vessel.

However, the field engineer in this case was attached to the foreign repair facility to augment its staff prior to the arrival of the (vessel name). He was available to work on any vessel putting into Singapore for repairs. For this reason, and upon consideration of the legislative history of the pertinent statute, in our opinion the repairs were not performed by a "resident of the United States", as that term is used in section 466(d)(2).

Holding: Labor expended by an American field engineer assigned to a foreign repair facility temporarily to augment its staff during a peak work period is not performed by a "resident of the United States" within the meaning of 19 U.S.C. 1466(d)(2) so as to qualify for remission of duties thereunder.

Effect on other rulings: None.

(C.S.D. 81–137)

Vessel Repairs: Petition for Remission of Duties Assessed on the Cost of Temporary Repairs to an American Vessel

Date: December 4, 1980
File: VES 13–18–RRUCDC
104940 JM

This ruling concerns a petition filed pursuant to section 4.14(k), Customs Regulations, for remission of duties assessed on the cost of repairs to an American vessel.

Issue: 1. Is the cost of temporary repairs subject to duty under 19 U.S.C. 1466?

2. Is the cost of an inspection dutiable when temporary repairs are effected as a result thereof?

3. Are labor charges for the time workmen are awaiting arrival of a vessel dutiable?

Facts: The subject vessel was inspected by divers outside the breakwater at Colon, Republic of Panama, on June 23, 1980. This inspection showed that the propeller was loose about 2½″ from its original position. On June 24, 1980, divers were available at 0600 hours awaiting the vessel which arrived in the bay at approximately 1300 hours. Further inspection revealed that the tail shaft nut was loose about 3″ from the propeller boss and the safety lock was broken. The divers removed the broken safety lock, found the nut and the thread on the shaft in good condition, pushed the propeller into place, tightened the nut, and fabricated and installed two safety locks. After the repairs were tested, a fair water cap was installed but it was not filled with grease and the bolt heads were not cemented because the cap would be removed for inspection after the cargo was unladen.

After the Regional Commissioner denied an application for relief from duty on the cost of repairs, a petition was filed requesting relief from the labor charges attributable to the inspection and to the time workmen were awaiting arrival of the vessel. The petitioner believes that the charges for the time spent by divers inspecting the damage and awaiting the arrival of the vessel at the repair berth are non-

dutiable because they are not part of the actual repairs and because the repairs accomplished in the foreign country were temporary in nature.

Law and analysis: In CIE 1156/62, dated October 24, 1962, we held that repairs made as a temporary expediency are subject to duty under the vessel repair statute.

In CIE 429/61, dated April 28, 1961, we held that testing which is effected for the purpose of ascertaining whether repairs to certain machinery or parts on the vessel are required, or is performed in order to ascertain if the work is adequately completed, is also an integral part of the repairs and is dutiable. Since the inspection in the subject case was made to determine if repairs were required, the cost of inspection is considered dutiable as a part of the temporary repairs.

In CIE 601/67, dated June 28, 1967, we held that the portal to portal pay of repairmen is part of the dutiable cost of repairs. We believe it follows from this decision that charges for the time workmen were awaiting arrival of the vessel similarly are dutiable.

Holding: 1. The cost of repairs made as a temporary expediency is subject to duty under 19 U.S.C. 1466.

2. The cost of the inspection, which was effected for the purpose of determining whether repairs to the vessel were required, is dutiable under 19 U.S.C. 1466 as part of the temporary repairs effected as a result thereof.

3. The labor charges for the time workmen were awaiting arrival of a vessel are considered a part of the cost of the repairs to the vessel. Since the cost of the repairs in the subject case is dutiable under 19 U.S.C. 1466, the labor charges attributable to the waiting period are dutiable.

(C.S.D. 81–138)

Drawback and Refunds: Extension of Time Period for the Return to Customs Custody of Rejected Merchandise

Date: December 9, 1980
File: DRA–1–RRUCDB NK 211348

Issue: Whether the 90 day time period in which rejected merchandise is required to be returned to Customs custody for exportation under 19 U.S.C. 1313(c), may be extended when the delay is due to the refusal of the foreign seller to agree to accept the return of the merchandise.

Facts: Two shipments of merchandise were imported on April 7 and

30, 1977. The importer claims that the first shipment did not conform to specifications and the second was sent without his consent. The importer further claims that the refusal of the foreign seller to agree to the return of the merchandise resulted in the delay in the return of the merchandise to Customs custody for exportation.

While the dispute between the parties was pending in litigation, the importer informed Customs on or about January 17, 1980, that the foreign seller agreed to accept the return of the merchandise. As a practical matter, the importer requested the District Director at the port where the drawback entry will be filed for an extension of the 90 day period in which to return the merchandise to Customs custody for exportation.

Law and analysis: Section 1313(c), title 19, United States Code, in compliance with applicable regulations, provides for a refund of 99 percent of duty paid on imported merchandise upon exportation when:

1. The merchandise does not conform to sample or specifications, or was shipped without the consent of the consignee; and,
2. Within 90 days after the merchandise was released from Customs custody it is returned to Customs custody for exportation.

The law also provides for the granting of an extension in writing for a longer time in which to return the merchandise to Customs custody for exportation.

Section 22.33(a) of the Customs Regulations provides that the District Director at the port where the drawback entry will be filed may, upon written application, extend the period in those cases where he is satisfied that the importer has been or will be prevented by circumstances beyond his control from returning the merchandise within the 90 day period, and that the importer proposes to return, or has returned, the merchandise within a reasonable time.

If the District Director is satisfied that the refusal of the foreign seller to agree to accept the return of rejected merchandise caused the delay of the importer in returning the merchandise to Customs custody for exportation within the 90 day period, he may grant an extension of time to return the merchandise to Customs custody for exportation. The granting of an extension of time does not imply a waiver of other mandatory requirements of the drawback law and regulations.

Holding: After the expiration of the 90 day time period in which rejected merchandise is required to be returned to Customs custody for exportation, a written request for an extension of the time period may be granted when it is shown that the delay of the return to Customs custody was due to the refusal of the foreign seller to agree to accept the return of the rejected merchandise.

(C.S.D. 81–139)

Vessel: Transshipment of Fish Taken on the High Seas by a Foreign-Flag Fishing Vessel

Date: December 11, 1980
File: VES–7–02 RRUCDC
VES–7–03/7–05
104912 MKT
104779

In response to your letter of October 9 and your telegram of December 3, 1980, we have considered whether a foreign-flag vessel which takes and processes fish on the high seas and transships the fish, or fish products processed therefrom, for direct exportation, in the territorial waters of the United States, including the internal waters of the State of Alaska, would be in violation of section 4311 of the Revised Statutes, as amended by the Nicholson Act (46 U.S.C. 251(a)).

Specifically you ask:

(1) Whether a West German-built and registered factory stern trawler which is harvesting and processing bottomfish in the U.S. fishery conservation zone under an allocation and which transships its processed product and related by-products to a foreign-built, foreign-flag support vessel for direct export (without landing such products on United States soil) while anchored within the three mile territorial limit but outside of any United States port violates 46 U.S.C. 251(a);

(2) If the proposed transshipment of product within the three mile limit is a violation of 46 U.S.C. 251(a), whether it is a substantive violation or merely a technical violation, and what the penalties in each case are; and

(3) If the proposed transaction is not in violation of 46 U.S.C. 251(a), whether the provisions of 46 U.S.C. 291 or 19 C.F.R. Part 18 or the entry and clearance requirements of Part 4 are applicable thereto?

(4) Under what circumstances may a transshipment of the type proposed take place within the internal waters of the State of Alaska without violating the Nicholson Act or other Customs laws of the United States?

Your client is the United States agent for a West German fishing company that operates a German-flag fish catching and processing vessel, the (vessel name) in the fishery conservation zone (16 U.S.C. 1811) under a permit issued pursuant to the Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Attempts to transship the fish products to a Dutch-flag vessel, the (name) at a location outside

the three mile territorial waters, described in 50 CFR 611.90(c)(2), have met with failure due to the severe weather conditions in the area. According to conversations with you, these conditions have resulted in injuries to the crew and damage to the vessel during the transshipment attempts. Your client therefore proposes to transship the fish products while at anchor in Beaver Inlet on the east side of Unalaska Island, Alaska, within the territorial waters of the United States.

Your questions are answered in the order presented.

(1) Section 4311 of the Revised Statutes, codified as the first sentence of 46 U.S.C. 251(a), which antedates the Nicholson Act ("the Act"), codified as the second sentence of section 251(a), reserves the privileges of vessels employed in the American fisheries to properly documented vessels built in the United States and owned by United States citizens. R.S. 4311 has been interpreted, at least since 1943, to prevent a vessel employed in fishing, other than vessel of the United States, or a vessel of less than five net tons owned in the United States, from coming into a port *or place* in the United States except to secure supplies, equipment, or repairs or if in distress (19 CFR 4.96(b), in effect since 1943; *see* T.D. 52880). In addition, R.S. 4311 has been interpreted, at least since 1924, to prohibit the transshipment of fish taken on the high seas by a foreign-flag fishing vessel to another vessel within the three mile limit.

The purpose of the Act, which became effective in 1950, is to strengthen R.S. 4311 by prohibiting foreign-flag fishing vessels from proceeding to a foreign port, there exchanging their document for that of a cargo vessel, and then proceeding to the United States to market their catch taken on the high seas. There is nothing in the legislative history of the Act to reflect an intention by the Congress to limit R.S. 4311 as interpreted by the Customs Service or its predecessor agency, the Department of Commerce, by restricting its application to an area which does not encompass the territorial waters of the United States or by adding to the purposes for which a foreign-flag fishing vessel may enter U.S. territorial waters.

By its terms, the Act prohibits a foreign-flag vessel from landing in a port of the United States fish or fish products processed therefrom taken or received on the high seas. Since 1974, the Customs Service has interpreted the Act to prohibit any foreign-flag vessel from transshipping fish taken or received on the high seas, or fish products processed therefrom, whether or not for export, to another vessel within United States territorial waters.

We rely on the definition of "port" in section 101.1(l), Customs Regulations, which was in effect in substance prior to the passage of the Nicholson Act (*see* section 1.1, Customs Regulations of 1943) in support of our interpretation of its geographic scope as including

territorial waters. Section 101.1(l) defines "port" to include a Customs district. In Alaska, the district, Number 31, comprehends the territory of the State of Alaska (section 101.3(b), Customs Regulations). The State of Alaska includes its territorial waters (48 U.S.C. ch. 2).

"Territorial waters", as defined by the Coast Guard in 33 CFR 2.05–25, are composed of the three mile territorial sea, the internal waters of the United States that are subject to tidal influence and those internal waters that are not subject to tidal influence but are or have been used, or are or have been susceptible for use, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce. This definition is consistent with the statutory definition of "port", for importation purposes, 19 U.S.C. 232, the predecessor to which, section 2767 of the Revised Statutes, has been in effect since 1873–1874. Section 232 defines "port" to include any *place* from which merchandise can be shipped for importation. (*See Petrel Guano Co.* v. *Jarnette*, 25 F. 675, 677 (C.C. E.D.N.C. 1885)).

That a "transshipment" is a "landing", an activity within the meaning of the Act, was established in a Customs Service decision abstracted as T.D. 68–206(2). That decision also established that the Act applies whether or not fish or fish products otherwise subject to the Act are transshipped for export. Both of these prohibitions are based on the rationale that the proscription of the Act is not limited by its terms to an unlading of fish or fish products for any particular purpose or purposes. To hold otherwise would permit foreign-flag catching vessels to enter a U.S. port or place for transshipment or unlading for export, purposes not permitted by R.S. 4311 and 19 CFR 4.96(b). This result, which would diminish the privileges of the American fisheries reserved to certain U.S. vessels, clearly is not intended by the Act, the purpose of which is to strengthen, rather than weaken, the already existing constraints on the use of foreign vessels in the American fisheries. We find further support for our conclusion in the decision that a "transshipment" is a "landing", in the context of a statute relating to the importation of merchandise, reached by the court in *The Fame*, 8 F.Cas. 982, 984 (D.Mich. 1858) (No. 4,633).

In addition to any prohibition against this activity in the laws and regulations administered by the Customs Service, the National Oceanic and Atmospheric Administration (NOAA) has informed us by letter, dated November 28, 1980 (a copy of which we understand has been furnished to you by that agency), that the Fishery Conservation and Management Act prohibits a foreign-flag vessel from transshipping fish taken on the high sea in the fishery conservations zone, under a permit, to another vessel in Beaver Inlet, Alaska, or elsewhere in the territorial seas of the United States. NOAA's

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letter also states that adverse weather conditions said to prevail in suitable prospective transshipment areas on the high seas, so as to endanger the vessels, their crew, or cargo, would not affect its position.

(2) We believe any violation of the Nicholson Act to be substantive, not technical. Any violation would subject the vessels involved to the penalty of seizure and forfeiture (18 U.S.C. 545; and 19 U.S.C. 1595a (a)). Fish or fish products landed in violation of the Act would be subject to forfeiture (18 U.S.C. 545). Every person who assists in the violation would be subject to a penalty equal to the value of the fish or fish products landed (19 U.S.C. 1595a(b)). Penalties incurred for a violation of the Fishery Conservation and Management Act would be determined by NOAA.

(3) Since we consider the proposed activity to be in violation of 46 U.S.C. 251(a), we find your third question to be moot. We make no decision concerning whether 46 U.S.C. 91, 19 CFR Part 18, or the entry and clearance requirements of Part 4 would be applicable to the activity.

(4) Your telegram appears to concede that the proposed activity is prohibited by the Fishery Conservation and Management Act but suggests that the NOAA decision does not prohibit the transshipment you propose in the internal waters of Alaska shoreward of the baseline of the territorial sea. You also advise us that the State of Alaska is prepared to create a "constructive port" for such purposes if this will help avoid the Nicholson Act.

Under the definition of United States "territorial waters" established by the Coast Guard and noted above, a point in the internal waters of the State of Alaska susceptible for use by itself or in connection with other waters as a highway for substantial interstate or foreign commerce would be in "territorial waters." Thus we rule that a foreign-flag vessel may not land fish caught or received on the high seas in internal state waters for the reasons discussed above. If this construction were not applied, Customs "port of entry," inside the baseline of the territorial sea, in internal state waters, would be outside the jurisdiction of the Nicholson Act, clearly a result not intended by the Congress.

In summary, the Customs Service holds that a foreign-flag vessel which takes and processes fish on the high seas in the fishery conservation zone and transships the fish, or fish products processed therefrom, for direct exportation, in the territorial waters of the United States, including the internal waters of a state, would be in violation of R.S. 4311, as amended by the Nicholson Act.

This holding is consistent with previous rulings of the Customs Service and the Department of Commerce, its predecessor agency in the administration of R.S. 4311, which have held, at least since

1924, that the transshipment of the catch of a foreign-flag fishing vessel to another vessel in the territorial waters of the United States is proscribed.

(C.S.D. 81–140)

Entry: Separate Entry for Individual Invoices Involving One Shipment

Date: December 11, 1980
File: ENT–1–01 RRUEE
713416 M

This ruling concerns whether a company may make a separate entry for each invoice when one shipment is involved.

Issue: May a large retail company make a separate entry for each invoice although one shipment is involved?

Facts: Each import shipment of a large retail company is very large involving numerous invoices. This results in this company filing a voluminous entry. Because that company's bookkeeping and inventory systems are set up on an individual invoice basis, it wishes to enter individual invoices on separate entries even though the merchandise has arrived on the same vessel and has been received on one bill of lading. That company notes that the consolidation of invoices on a one entry per shipment basis creates problems in tracking and controlling.

The District Director of Customs at the port involved notes that section 141.51 of the Customs Regulations sets forth the general requirement of one entry per shipment. However, he requests that for this company, Headquarters should approve pursuant to section 141.52(i) a waiver of this requirement. He points out that allowing individual entries for each invoice will not prejudice the revenue and will allow for the efficient control of Customs business. The district director notes that single-line entries will be more readily assigned to the proper commodity specialist team and will provide a clear audit trail for Customs as well as the importer.

Law and analysis: Section 141.51 of the Customs Regulations provides that all merchandise arriving on one vessel or vehicle and consigned to one consignee shall be included in one entry, except as provided in section 141.52. Paragraphs (a) through (h) of section 141.52, Customs Regulations, set forth certain exceptions from this requirement which do not apply to this case.

Paragraph (i) of section 141.52 provides that a special exception to the requirement of section 141.51 may be granted upon approval of Customs Headquarters.

Because granting the exception requested will benefit both Customs and the importer, the requested waiver is granted. No other request of this nature has been brought to our attention. We believe that this matter is not one of general concern and for that reason have decided not to amend section 141.52, Customs Regulations, to specifically provide for this exception.

If there are any other companies, such as the one involved, which would prefer to make a separate entry for each invoice, those companies should contact the district director of Customs at the port where they enter their merchandise. If the district director believes that similar benefits will accrue to the importer and Customs by permitting this exception, he may on the basis of this ruling permit that company to make a separate entry for each invoice.

Holding: Customs Headquarters approves the requested exception to the general rule of one entry per shipment and therefore, the large retail company involved may make a separate entry for each invoice although one shipment is involved.

(C.S.D. 81–141)

Drawback: Undershipment of Ordered Quantity of Merchandise Shipped Without Importer's Consent Thus Entitling Importer to Relief Under 19 U.S.C. 1313(c)

Date: December 12, 1980
File: DRA–1–RRUCDB B 212418

Issue: Whether an undershipment of acrylic woven fabric qualifies under section 1313(c) as having been "shipped without the consent of the consignee" when the supplier is unable to deliver the ordered quantity of fabric to the importer, or constitutes failure to meet an implied specification of the purchase order, also covered by section 1313(c).

Facts: An American seller of fabrics, pursuant to a contract ordered a quantity of acrylic woven fabric from a foreign seller owning a mill based in Holland. The fabric was to be shipped over a 2-year period. The U.S. firm received the first shipment of the fabric and began to produce sample books of the fabric as is the practice in the industry in order to demonstrate the foreign fabric to its customers.

Subsequently, the foreign seller was unable to fulfill the contract because of its inability to obtain labor and yarn, and advised the U.S. firm it was shutting down that particular mill. The foreign seller agreed to refund the money paid for the fabric and the U.S. firm agreed to return all fabric which had not been made up into sample

books. It is the duty on this returned fabric which the U.S. firm seeks to recover as drawback under section 1313(c).

Law and analysis: Section 1313(c) provides:

> Upon exportation of merchandise not conforming to sample or specifications or *shipped without the consent of the consignee* upon which the duties have been paid and which have been entered or withdrawn for consumption and, within ninety days after release from Customs custody, unless the Secretary authorizes in writing a longer time, returned to Customs custody for exportation, the full amount of the duties paid upon such merchandise shall be refunded as drawback, less 1 per centum of such duties. (Emphasis added.)

Assuming compliance with the other requirements of 1313(c), an applicant may receive relief under the "shipped without consent of the consignee" provision when the supplier has overshipped merchandise in contravention of an ordered quantity.

This being the case, it would seem that an undershipment of merchandise in contravention of an ordered quantity would qualify the applicant for drawback. The analogy is rational because in both cases, the applicant wants a prescribed number of items and a change in the number may restrict the applicant's use of the merchandise which is received. It is reasonable to assume should a company order a certain number of items, with the first number of items delivered to be used as samples, that the company would refuse the first shipment if it knew no other shipments would be made.

Therefore, in the case at hand the U.S. firm contracted for "orders" of acrylic woven fabric as evidenced by an order form dated November 3, 1979. The foreign seller informed the U.S. firm by letter on April 2, 1980 that they would accept reshipment of the fabric pieces not made into books because they could not fulfill the contract. The trade custom of this fabric industry requires that a line of fabric which a buyer seeks to purchase must continue to be produced for an average of two years so that the seller may not discontinue the line of fabric.

The cited law refers to "merchandise not conforming to . . . specification". In this case, the goods received technically met the physical properties specified by the U.S. firm. However, one criterion specified for the fabric was the specification of quantity. When applying this specification to the fabric, it is clear the fabric shipped did not meet it.

Holding: The U.S. firm is entitled to relief under 1313(c) because the undershipment of acrylic woven yarn was shipped without its consent, and the shipment received did not meet the specification of quantity.

(C.S.D. 81–142)

Drawback: Applicability of Drawback for Merchandise Used in an Assembly Operation To Manufacture an Article Under Drawback Conditions

Date: December 19, 1980
File: DRA–1–RRUCDB
211997 NK

Issue: Whether drawback is applicable when designated merchandise used in an assembly operation to manufacture an article under drawback conditions is subsequently dismantled from the completed article for convenience in shipping for exportation purposes.

Facts: A drawback claimant has an approved contract under section 1313(a), title 19, United States Code, to assemble tractors and other automotive articles for export with the use of imported machinery, engines, subassemblies, and parts. The claimant asks if drawback would be allowed for imported tires under the following set of facts:

1. Imported tires are mounted onto rims which in turn are affixed to a tractor assembled under drawback conditions.
2. The assembled tractor is tested.
3. After testing, the rims and tires are removed from the tractor.
4. The tires and rims are separated.
5. The tires are tied into a bundle and the rims are packed in boxes.
6. The tires and rims are dismantled from the tractor and separated for convenience in shipping.
7. The tractor, together with the bundled tires and packed rims, is shipped and exported as a complete article or as an entirety.

Law and analysis: The United States Customs Court has held that mounting five imported tires and tubes on American made wheels, four of which were affixed to an automobile and the fifth one placed in the trunk of the automobile as a spare, was a manufacture or production for drawback. See 27 Cust. Ct. 88, C.D. 1352 (1951).

In Customs Service Decision (C.S.D.) 79–79, we held that a disassembly and repacking operation did not constitute a manufacture or production for drawback. A copy machine was imported and was completely disassembled. Parts of the machine were repackaged, and exported as a kit. In C.S.D. 79–79, the only claimed manufacture or production consisted of a disassembly operation and differs from the facts under consideration.

In the case under consideration, the imported merchandise, con-

sisting of tires, was used in an assembly operation in a manner similar to the operations discussed in C.D. 1352, which the Court held was a manufacture or production for drawback. The subsequent dismantling of the tires and rims was for convenience in shipping the tractor with the tires and rims as an entirety for exportation.

The claimant's drawback contract should incorporate fully the operation described and should be supported by proper record keeping.

Holding: Drawback is applicable for designated merchandise which is used in an assembly operation to manufacture an article under drawback conditions and the designated merchandise is subsequently disassembled from the completed article for convenience in shipping the units as an entirety.

(C.S.D. 81-143)

Drawback: Eligibility for Refund of Duty as Drawback on Cargo Containers Manufactured in the U.S. Wholly or Partly of Foreign Components

Date: December 23, 1980
File: DRA-1-09-CO:R:CD:D
212375 B

Issue: Whether cargo containers manufactured in the United States wholly or partly with the use of imported merchandise, departing the country in international traffic after having been sold to foreign entities, are considered exported for purposes of the manufacturing drawback law.

Facts: A United States corporation has manufactured 40′ and 20′ steel dry cargo containers used to carry merchandise in international commerce. These containers are built to specifications and are considered instruments of international traffic. Certain imported components are incorporated in these containers. After construction the containers are sold to two foreign corporations affiliated with the U.S. manufacturer. The purchase contracts between the manufacturer and its respective buyers require the purchasers to export the containers by causing them to depart the United States in international traffic. The containers are then leased by the buyers to ocean carriers for use exclusively in the international transport of merchandise. The lease agreements prohibit the lessee carriers from using the containers in domestic commerce in the United States.

Should the issue raised be answered in the affirmative, the U.S. manufacturer intends to file for an approved drawback contract and and submit claims for drawback.

Law and analysis: Legal Determination 80-0152, June 4, 1980, held that aircraft manufactured in the United States under drawback

conditions, departing the United States in international traffic under a *foreign registry*, are exported for purposes of the drawback law (emphasis added). This decision was based on Treasury Decision 78–288 of July 31, 1978, holding that foreign-owned and based aircraft, imported under temporary importation bond for repairs and modification, were exported for purposes of the temporary importation bond provisions when departing in international traffic. As stated in that ruling, "(W)e do not look to see where it (the aircraft) is parked but rather to the flag it flies and the registration it carries." In the instant case, we are dealing with articles which carry no flag, so resolution of the issue depends upon the ownership of the articles at the time they leave this country. The request for ruling states that the purchasers are "affiliated" with the manufacturer. According to information supplied verbally by counsel for the U.S. manufacturer, that corporation as well as the two foreign purchaser/corporations are wholly-owned subsidiaries of a parent corporation located in New York City. Each corporation is a separate entity, having its own board of directors and stockholders although it is possible some stockholders hold shares in each. The two foreign corporations were chartered in 1969 and 1973/74, some time prior to the initiation of the container manufacturing operations, which began in 1976. Terms of sale are negotiated arms' length with payment in cash, the foreign corporations obtaining independent bank financing when necessary. Based on this information, it appears that ownership of the containers rests with the foreign purchasers at the time the containers exit the United States in international traffic.

Holding: Cargo containers manufactured in the United States partly or wholly with foreign components are eligible for refunds of duty as drawback when such containers are manufactured under drawback regulations and exit the United States in international traffic under foreign ownership. Previous rulings to the contrary are hereby overruled accordingly.

(C.S.D. 81–144)

Classification: Description of Evidence Needed To Support Claim of Defective Merchandise

Date: December 23, 1980
File: CLA–2:RRUCV
542259 MK

To: District Director of Customs, Seattle, Washington.
From: Director, Classification and Value Division.

Subject: Substantiation of quality deficiency: internal advice No. 165/80.

This refers to your memorandum of August 22, 1980, received from the C.I.E. in New York on November 4. You advise that an importer's attorney has requested internal advice as to the evidence necessary to substantiate quality deficiencies in imported merchandise and the appropriate allowances in duties.

The merchandise, men's shirts, was entered as being of first quality at invoiced unit values, and liquidated as entered. Subsequent to liquidation, the importer informed the appropriate import specialist that the merchandise was defective and requested reliquidation at lower values. The importer was unable to supply the evidence you requested to support his claim, and stated that he neither received a credit from the manufacturer nor requested an allowance for substandard merchandise because of the length of time before the defects were noticed.

The importer's attorney contends that a price adjustment by the foreign seller is not a prerequisite to a reduced appraisement, citing CIE 132/62, and that defective merchandise cannot be appraised at the price of first quality merchandise. He suggests, since there is no renegotiated price to approximate export value, that we adopt an approximation of United States value by use of all reasonable ways and means, and he presents detailed calculations by which he arrives at an alleged approximation of United States value.

We agree, of course, with court decisions and Headquarters rulings holding that first quality and defective merchandise should be appraised differently. There are also a number of Headquarters rulings holding that when merchandise is found to be defective after liquidation, Customs officers are authorized to reliquidate the entry under section 520(c)(1), Tariff Act of 1930, as amended, if the mistake of fact as to the nature of the merchandise is timely called to our attention, and if the defect is manifest from the record, or if the importer can establish by documentary evidence satisfactory to Customs that there was a mistake of fact within the meaning of the statute.

In the case of *Hoenig Plywood Corp. et al* v. *United States*, A.R.D. 91 (1958), the merchandise as imported was defective and not of the quality ordered. A settlement was negotiated between the importer and the manufacturer, resulting in a substantial reduction from invoiced prices. The court refused to accept invoice prices, standing alone, as evidence of statutory value and found prices renegotiated after shipment of even less evidentiary proof of value. Inasmuch as plaintiffs failed to establish the price at which the inferior merchandise

347-181 O - 81 - 9

was "freely offered. . ." the presumption of correctness of the appraiser's return of value was not overcome.

C.I.E. 132/62 ruled that, contrary to the court decision appraising officers could, under the authority of section 500 of the tariff act, consider evidence of a renegotiated price as one of the acceptable proofs of the dutiable value of merchandise found to be defective after entry, because Customs officers are not bound by the burden of proof standards which apply in court proceedings.

The ruling also discussed what evidentiary material would be acceptable to support the validity of the negotiated price. We do not construe that ruling as permitting alternative means of establishing the dutiable value of defective merchandise.

In the case you submitted, we conclude that the test records are evidence that some of the merchandise was defective. We agree with the Chief, Duty Assessment Branch VII/VIII, New York Seaport Area, that the attorney's suggested method of arriving at the dutiable value of the merchandise is unacceptable, for the following reasons, which we summarize. The sales evidence shows that 60 percent of the merchandise was sold at the original wholesale price and there is no indication that the retailers sought return of the merchandise although the attorney's letter of January 3, 1979, to Customs at J.F.K. Airport claims that those garments were also defective. The sales at reduced prices appear to be voluntary and related solely to the importer's concern about possible adverse effects to its image, but no evidence of adverse comments is presented.

The file indicates that 62 percent of the claimed defective merchandise was sold via intercompany transfer to related factory outlet stores. If those stores operate on a typical retail markup of 100 percent of cost, the importer's parent is receiving the full wholesale price. The sales to the lower end retail outlets and bargain basement stores should not form the basis for a reasonable arms length transaction, since the company has not submitted evidence to show that these were outside the importer's normal course of business.

An adjustment for repair costs could be made if the necessity for such costs is verified by submission of data on merchandise returned by the importer's customers, if the importer submits evidence of actual repair costs necessary to place the merchandise in saleable condition.

Any adjustment to the dutiable value should be made under section 500 of the tariff act (for importations antedating the Trade Agreements Act of 1979), and should conform to the applicable basis of appraisement.

In conclusion, when the exporter does not grant a price reduction, we believe the following should be required:

1. A copy of the original orders and confirmations, including specifications and/or approval samples.

2. Correspondence from the importer's customers detailing reasons for their rejection of the merchandise, or cancellation letters or documentary evidence of the importer's price adjustment for inferior merchandise.

3. Copies of invoices to third parties showing prices for first and second quality merchandise.

4. Evidence substantiating that the specifications were not met, and evidence that the supplier was capable of meeting the claimed specifications.

5. Corollary evidence regarding the "usual" sales experience for similar first quality merchandise.

(C.S.D. 81–145)

Classification: Mixture of Propane-Butane

Date: December 24, 1980
File: CLA–2 CO:R:CV:G
065816 JH

To: District Director of Customs, Houston, Texas.

From: Donald W. Lewis, Assistant Commissioner, Regulations and Rulings.

Subject: Internal advice (unnumbered) on the classification of a mixture of propane-butane.

The mixture is obtained by the following method. A stream of hydrocarbons from an oil/gas well is passed through a separator which separates the hydrocarbons into liquid petroleum and C–1 to C–9 gaseous hydrocarbons. This natural gas stream is then passed through a cryogenic (low temperature) unit which strips away the methane, ethane, leaving the C–3 to the C–9 hydrocarbons. This stream then passes to a fractionator, which separates the C–5 to C–9 fractions (also called "natural gasoline") from the propane-butane stream. The propane-butane stream is then pumped directly into a pressurized vessel for exportation to the United States.

A typical composition of the subject product, in percent by weight, is given as: ethane 0.47 percent, propane 54.82 percent, isobutane 13.10 percent, normal butane 26.90 percent, isopentane 3.27 percent, and normal pentane 1.44 percent.

It is contended that the product is precluded from classification in item 475.15, TSUS, as a mixture of propane and butane because of the high percentages of isopentane and normal pentanes which run from 2 to 7 percent. It is felt that this position is justified by the ASTM standards which permit a maximum percentage of 2 percent pentanes and other hydrocarbons by volume in a mixture of propane and butane.

Since the mixture contains over 50 percent of a single hydrocarbon by weight, it is not classifiable as a mixture of hydrocarbons, in other than liquid form, in item 475.70, TSUS. The question is then whether the product is classifiable as a mixture of propane and butane in item 475.15 TSUS, or a mixture not specially provided for in whole or in part of hydrocarbons derived in whole or in part from petroleum, shale oil, or natural gas in item 432.10.

Item 475.15 not only covers natural gas but also methane, ethane, propane, and butane and mixtures thereof. The Tariff Study (C.I.E. 1/64) points out that the methane, ethane, propane and butane are not considered liquid derivatives of petroleum but are included with natural gas, following C.D. 2112. That case recognized that a propane/butane mixture may be obtained in association with natural gas. In fact, item 475.1545 is the statistical breakout for mixtures containing more than 90 liquid volume percent of propane and butane. While such statistical breakouts may not be legally binding, they often do reflect technical and commercial definitions, and it is understood that this is an industry definition. In fact, information obtained from an industry source is to the effect that propane-butane mixtures in issue while perhaps not a good mixture for "Liquified Petroleum Gas," (LPG), it would be considered a commercial mixture of propane-butane and the 2 to 7 percent isopentane and pentane content would not be considered excessive. In this, connection, it was pointed out by a industry source that while the ASTM standard relied on to preclude this mixture from being classified in item 475.15 does represent a standard for LPG, it is not an absolute.

Since the chemical schedule of the Tariff Schedules is couched in technical, chemical terminology, Customs has tradionally sought to interpret the various provisions in the light of industry standards.

Accordingly, since the propane-butane mixture in question is recognized as a commercial mixture of the gases, and the isopentane and pentane content present is not regarded as excessive for a commercial mixture, it is concluded that the mixture of propane-butane as above described is classifiable in item 475.15, TSUS.

(C.S.D. 81–146)

Drawback: Timely Filing of Application for Further Review of Protest; Retention of Records With Respect to Drawback Claims

Date: December 24, 1980
File: DRA– –CO:R:CD:D
211424 NK

Re Requests for further review of protests numbered 1101–9–000081 and 1101–9–000106.

REGIONAL COMMISSIONER OF CUSTOMS,
Baltimore, Maryland.

DEAR SIR: The following is in reply to your request for further review of the above-referenced protests.

Issues: 1. Whether an application for further review of a protest is timely when filed 90 days after the liquidation of the drawback entry.

2. Whether a drawback claimant must retain verifying records for drawback for three years after payment or for three years after the liquidation of the drawback entry.

Facts:

Issue 1—Protest No. 1101–9–000081, covers drawback entry numbered 162346 which was liquidated on February 9, 1979, with a disallowance of drawback. A protest was filed on March 21, 1979, within 90 days after liquidation. However, an application for further review of the protest was filed on May 15, 1979, more than 90 days after liquidation.

Protest No. 1101–9–000106 covers drawback entries numbered 135279, 143234, 143235, and 143236 which were liquidated on March 16, 1979. However, a protest against the disallowance of drawback and an application for further review were filed within 90 days after liquidation.

Issue 2— The drawback payments and liquidations were transacted for all drawback claims covered by the drawback entries referenced-above pursuant to the accelerated payment procedure outlined in section 22.20a of the Customs Regulations. Those transactions were as follows:

Drawback entry No.	Date of payment	Date of liquidation
135279/73	Mar. 22, 1974	Mar. 16, 1979
143235/73	Mar. 24, 1974	Mar. 16, 1979
143236/73	Mar. 24, 1974	Mar. 16, 1979
143234/73	May 10, 1974	Mar. 16, 1979
162346/72	May 29, 1975	Feb. 09, 1979

On November 29, 30, and December 1, 1977, a Customs auditor performed an examination of the books and records of the protestant for verification of the claims for drawback. The auditor found that the protestant did not have the necessary manufacturing records to identify the imported merchandise used in the manufacture of articles covered by the drawback entries. On liquidation of the entries, drawback was disallowed and demand was made upon the protestant to refund the payments made under the accelerated payment procedure.

The protestant claims that it kept adequate records to support its claims in conformity with its contract (rate) and that Customs' delay in verifying the claims 4 to 5 years after the drawback entries were filed was an unreasonable delay. During the period of delay, the records were inadvertently destroyed when a building where the records were stored was razed. Further, the protestant claims that it did not anticipate a lengthy delay by Customs in verifying and liquidating the drawback entries pending the determination by the Customs Court as to the dutiable status of the imported merchandise covered by the import entries designated for drawback.

Law and analysis:

Issue 1—Under section 1514, title 19, United States Code, and applicable regulations, the liquidation of drawback entries allowing or disallowing drawback, with certain exceptions not applicable to the submitted facts, become final and conclusive upon all persons unless a protest is filed with the appropriate Customs officer within ninety days after but not before the notice of liquidation.

Section 1515, title 19, United States Code provides that upon request of the protesting party filed within the time allowed for filing of a protest under section 1514, a protest may be subject to further review by another appropriate Customs officer. Therefore, a request for further review of a protest must be filed within 90 days after liquidation.

Protest No. 1101–9–000081 was timely filed within 90 days after the liquidation of entry numbered 162346. However, the request for further review of the protest was filed more than 90 days after the notice of liquidation and was not timely within the requirement of law.

Comment: Protest No 1101–9–000106 and the request for further review were both filed within 90 days after the notice of liquidation and will be given further review. Because the deciding issue is the same in both protests, the protestant, as a practical matter, will receive further review for protest no. 1101–9–000081.

Issue 2—The protestant's drawback contract (rate) as amended, incorporates by reference a statement subscribed to on January 12, 1954. The statement contains the following promise that the protestant will

> (H)old its factory and records open for examination at all reasonable hours by authorized Government officials, and to keep such records, together with the supporting data from which prepared, for at least three years from the date of payment of any drawback upon articles on which drawback is claimed under any drawback rate or amendment predicated in whole or in any part upon this statement.

This promise is in conformity with section 22.46 which was added to the Customs Regulation on September 21, 1957 (22FR7538, T.D. 54442) and states as follows:

> All records required to be kept by the manufacturer or producer under this part of the regulations with respect to drawback claims, and records kept by others to complement the records of the manufacturer or producer, shall be retained for at least 3 years after payment of such claims.

Section 22.46 of the Customs Regulations which is controlling in deciding the issues in these protests has not been changed or amended although a rulemaking proposal to do so is pending (See 42FR26993). Nor is this requirement in conflict with the accelerated payment procedure.

The accelerated payment procedure was added to the Customs Regulations on December 22, 1972 (37FR28283) without changing section 22.46. The procedure, under certain conditions, permits a drawback claimant to receive payment before the liquidation of the drawback entry. This procedure does not prohibit Customs from auditing the claimant's records within 3 years after payment for verification of the claims. The procedure also provides that after liquidation, any amount found to be due will be paid or a demand for refund of any excess payment will be made. Thus, Customs may withhold liquidation of a drawback entry pending a decision by the Court as to the dutiable status of the imported merchandise covered by the import entries designated for drawback without delaying any necessary verifications within 3 years after payment.

HOLDINGS:

Issue 1—An application for further review of a protest must be filed with the appropriate Customs officer within ninety days after but not before the notice of liquidation of a drawback entry.

Issue 2—All records required to be kept by a manufacturer or

producer with respect to drawback claims, shall be retained for at least 3 years after payment of such claims. A manufacturer is not required to retain such records 3 years after liquidation of a drawback entry.

You may deny in full protest numbered 1101–9–000081 because the drawback claimant failed to retain verifying records within three years after payment of drawback.

You are directed to allow protest numbered 1101–9–000106 because the drawback claimant was not required to retain verifying records beyond three years after payment.

Your file is returned.

(C.S.D. 81–147)

Classification: Battery-Operated Metal Detector

Date: December 30, 1980
File: CLA–2 CO:R:CV:S
055993 SC

DISTRICT DIRECTOR OF CUSTOMS,
U.S. Customs Service,
Terminal Island, San Pedro,
Los Angeles, California.

DEAR SIR: This ruling involves a reexamination of our decision 061615 of February 15, 1980, concerning Protest No. 2704–9–001252, which was filed on behalf of (name) because of the submission of additional information.

Facts: The merchandise in question consists of a battery-operated metal detector. The device buzzes when the search coil comes in close proximity to a metallic object. The buzzing stops as the coil is moved away from the object. Supplemental information indicates that the numbered 60–3003 metal detector provides a variation of sound intensity when the amount or location of the metal is changed. A variation of pulse rate proportional to the intensity is provided, according to the report. It further indicates that when the battery is weak, it is difficult to set the timing controls for a slow pulse rate, and the oscillator cuts out abruptly without slowing down.

The importer indicates that although the detector in question may not have a meter which can be read so that the user can determine exact size and distance, it does provide for a measurement of the amount of metal or its location in two different manners. It does so by providing

for a "variation of sound intensity" and a "variation of pulse rate" proportional to sound intensity.

Issue: Is the metal detector in question classifiable under the provision for electrical sound signalling apparatus in item 685.70, Tariff Schedules of the United States (TSUS), or under the provision for other electrical measuring, checking or analyzing apparatus, in item 712.49, TSUS, rather than under the provision for electrical articles not specially provided for in item 688.40, TSUS, (now 688.45).

Law and analysis: This Headquarters has previously ruled in a letter 054585, dated May 2, 1978, that merchandise similar to the metal detector under consideration was properly classifiable as electrical articles, not specially provided for, in item 688.40, TSUS. While the instant merchandise may depend upon an electrical phenomenon which varies according to the factor to be ascertained, it does not measure, check, analyze, or automatically control within the meaning of item 712.49. As we stated in our letter 061615 of February 15, 1980, citing the *United States* v. *Corning Glass Works*, C.A.D. 1216, while the metal detector might be conceived as an instrument which investigates and makes sure about conditions or circumstances, its function more closely fits the dictionary description of detect, that is, to discover the presence of. Further in cases like the map inspection process, there is a comparision by an operation of visual information with a standard. Metal detection involves no such process.

The device is not classifiable as sound signalling apparatus as claimed. We note that in *Oxford International Corporation* v. *United States*, C.D. 4608, the Customs Court in construing item 685.70, TSUS, concluded that the doctrine of *ejusdem generis* supports the interpretation that item 685.70 encompasses only those devices whose function is to call attention to temporary or abnormal conditions. * * * The Court further stated that in item 685.70, the general phrase "other sound or visual signalling apparatus" is preceded by the following enumeration: "Bells, sirens, indicator panels, burglar and fire alarms." All of the named devices are activated or function in temporary or abnormal situations only. Thus, the general provision "other sound or visual signalling apparatus" must exclude articles which operate continuously, and which do not warn of the existence of emergencies or special circumstances. In our view, the merchandise in question does not meet the judicial requirements of item 685.70.

Accordingly, we must conclude that the metal detector in question, which does not contain a metering device, is properly classifiable under the provision for electrical articles, not specially provided for, in item 688.40, TSUS, (now 688.45) dutiable at the rate of 5.3 percent ad valorem.

(C.S.D. 81–148)

Classification: Whether Silver Articles Created Between 1895 and 1915 Are Properly Classified as Antiques

Date: December 30, 1980
File: CLA–2:RRUCSC
063973 TL

DISTRICT DIRECTOR OF CUSTOMS,
U.S. Customs Service,
Milwaukee, Wisconsin.

DEAR SIR: This ruling responds to your July 18, 1980, request concerning the proper classification of certain silver articles, Internal Advice 137/80, received in this office August 29, 1980.

Issues: 1. Are articles created between 1895 and 1915 properly classified as antiques under item 766.20, Tariff Schedules of the United States, (TSUS).

2. Are these silver household articles considered articles of utility precluded from free entry as works of art by Headnote 1(iv), Subpart A, Part 11, TSUS.

3. Are articles made in the Union of Soviet Socialist Republics before 1918 entitled to the column 1 rates of duty.

Facts: Two articles made by silversmiths who worked for (name) were imported into the United States. According to the submission from the seller of these articles they were made before a communist state was established in the U.S.S.R. One of the articles is an oval-shaped silver-mounted moss agate bonbonniere with silver scrolled feet. The other is a silver-mounted nephrite bellpush. The cavity inside the bonbonniere can be filled with candy. The bellpush was originally used to signal people, possibly servants. Each of the articles was made between 1895 and 1915.

Law and analysis: Item 766.20, TSUS, is a provision for, ". . . antiques made prior to 100 years before their date of entry."

Item 765.25, TSUS is a tariff provision for: "Original works of the free fine arts not provided for in the foregoing provisions. . . ."

It appears that the claim, that these articles are antiques, has been abandoned. In any case, articles made between 1885 and 1915 are not properly classified under item 766.20, TSUS, as they are not 100 years old.

Headnote 1(iv), Subpart A, Part 11, Schedule 7, TSUS, indicates that ". . . articles of utility . . ." are not classified under item 765.25, TSUS.

Webster's New World Dictionary defines bonbonniere as: "a container for bonbons; candy box or dish."

In *Alexander & Oviatt* v. *United States*, T.D. 45639 glass ". . . chande-

liers, a clock, door and window panels . . .", were considered to be articles of utility. In *Dapato Statuary Co.* v. *United States*, T.D. 42840, A marble, mosaic, inlaid floor, in 16 colors was precluded from being a work of art because, as a floor it served a utilitarian function even though it had artistic merit. Similarly, we are of the opinion that notwithstanding the artistic qualities of these two silver articles, they are utilitarian and thus are not properly classified under item 765.25, TSUS. The bonbonniere could be used as a candy dish, the bellpush as a signalling device.

Treasury Decision 52788 indicates that articles which are produced or manufactured in the Union of Soviet Socialist Republics and are exported before July 1, 1917, are entitled to column 1 rates of duty. In an October 2, 1980 submission, it is stated that both of the items haAe been in private collections outside of the U.S.S.R. for seven decades.

Thus, we are of the opinion that they are properly dutiable at column 1 rates of duty.

(C.S.D. 81–149)

Entry: Prohibited Entry of Certain Sculptures Owing to Copyright Infringement Pursuant to 17 U.S.C. 602

Date: January 2, 1981
File: CPR–3–CO:R:E:E
714065 SO

This ruling concerns whether or not a shipment of mobile and kinetic sculpture invoiced as "Horse Rider S" is considered to be an infringing importation pursuant to section 602 of the Copyright Revision Act of 1976 (17 U.S.C. 602).

Issue: Would the importation from Taiwan of a shipment of mobil kinetic sculptures invoiced as "Horse Rider S" infringe upon the rights of the copyright owner, Otagiri Merchantile Company, Inc., which has recorded their copyright for "Horse" VA–8–950 for kinetic sculpture with Customs for import protection.

Facts: The shipment referred to above arrived in San Francisco, California. Customs notified the importer and the copyright owner pursuant to section 133.43 of the Customs Regulations (19 CFR 133.43) that the shipment was suspected of being an infringing importation. The importer denied that the articles constituted infringing copies. The copyright owner wrote to Customs at San Francisco to demand the exclusion of the detained imported articles and filed the bond required by 19 CFR 133.43(b)(2). Samples of both works were submitted to Customs Headquarters for comparison purposes in reaching our decision.

The attorney for the importer has alleged that copyright protection only obtains to assembled three-dimensional objects. In view of the fact that the imported articles consist of two parts, a balancing wire horse and rider figure which rocks back and forth on a separate pedestal, the attorney asserts that there is no way for Customs to determine the similarity between the copyrighted three-dimensional objects and the unassembled parts imported by his client.

The copyright owner stated that the parties are now before the U.S. District Court for the Northern District of California on the issue of copyright infringement. The importer attempted to have the suit dismissed on the basis that kinetic sculptures are not the proper subject matter for copyright registration but was unsuccessful. The copyright owner asserts that the copyright registration is presumably valid for Customs purposes and that the U.S. Customs Service should confine itself to the issue of whether or not the imported article is substantially similar to the work protected by copyright. A visual comparison of the imported article with the copyrighted work is said to be sufficient to reach a conclusion that copyright infringement exists. If substantial copying exists, the Customs Service is requested to seize and forfeit the merchandise to the government.

Law and analysis: Section 602(a) of the Copyright Law (17 U.S.C. 602(a)) provides, with certain specified exceptions not applicable in this case, that importation into the United States, without authority of the owner of copyright under this title, of copies of a work that has been acquired outside the United States, is an infringement of the copyright. The Secretary of the Treasury is authorized to prescribe regulations for the enforcement of the provisions of this title prohibiting importation.

Section 603(c) of the Copyright Law (17 U.S.C. 603(c)) provides that, "Articles imported in violation of the importation prohibitions of this title are subject to seizure and forfeiture in the same manner as property imported in violation of the Customs revenue laws. Forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be; however, the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer had no reasonable grounds for believing that his or her acts constituted a violation of law."

The test employed to determine if a design has been copied is whether an ordinary observer who is not attempting to discover disparities between two articles would be disposed to overlook them and regard their aesthetic appeal as the same. The substantial similarity test was developed in order to bar a potential infringer from producing a supposedly new and different work by employing the tactic of

making deliberate, but trivial, variations of specific features of the copyright protected work.

We agree with the copyright owner that in cases such as this, where the validity of a copyright registration has been challenged, in Court or otherwise, Customs should confine itself to making a determination as to whether or not copying exists. However, we are constrained to note that the United States Court of Appeals, Sixth Circuit, held in the case of *Monogram Models, Inc.* v. *Industro Motive Corporation*, 492 F. 2d 1281, 181 USPQ 425 (1974) that plastic scale model airplane kits were proper subject matter for copyright protection and that the copyright was valid as to all components of the kit, including plastic component parts. We also note the decision of the United States District Court, S.D. New York, in the case of *Blazon, Inc.* v. *Deluxe Game Corporation*, 268 F. Supp. 416 156 USPQ 195 (1965) which held that statues or model of animals or dolls are entitled to copyright protection, including a model horse.

In view of the fact that the assembly process referred to by the attorney for the importer amounts to merely placing the horse and rider on the pedestal, we strongly disagree with the assertion of the attorney for the importer that there is no way for Customs to determine the similarity between the copyright protected work and the imported article. Our comparison of the works leaves no doubt that the imported article is substantially similar to the copyright protected work. The minor differences in the placement of the ears of the horse, the curve of the arms of the rider, and the shape of the pedestal appear to us to constitute a deliberate attempt to make minor variations in the design while preserving a similar aesthetic appeal to the ordinary purchaser. Our general impression is that the works appear to be almost identical.

Holding: We are of the opinion that the imported articles invoiced as "Horse Rider S" would be prohibited entry into the United States as infringing on the rights of the copyright owner, Otagiri Merchantile Company, Inc. The merchandise is subject to seizure and forfeiture in accordance with 17 U.S.C. 603. In appropriate cases, the district director may grant relief from forfeiture upon consideration of a petition submitted pursuant to 19 CFR 133.51(a), under conditions specified by him (19 CFR 133.51(b)). However, in cases where the importer satisfies the district director that he had no reasonable grounds for believing that his acts constituted a violation of law, and exportation is suggested as an alternative disposition for the seized merchandise, exportation of the unlawfully imported articles would be limited by 17 U.S.C. 603(c) to returning the articles to the country of export.

(C.S.D. 81–150)

Drawback: Communications Satellites Stored in a Foreign-Trade Zone

Date: January 5, 1981
File: CO:R:CD:D
212092 WR

Issues: 1. Whether an article made in the United States using duty-paid foreign materials may be placed in a foreign-trade zone as privileged-domestic merchandise?

2. Whether the five-year period set in section 1313(i), Tariff Act of 1930, as amended (19 U.S.C. 1313(i)), is suspended while an article is in a foreign-trade zone as privileged-domestic merchandise?

3. Whether zone-restricted status merchandise may be removed from a foreign-trade zone under the temporary-importation-bond procedure?

4. Whether the launching of a satellite that is owned and operated by an international organization is an exportation for drawback purposes?

Facts: Communications satellites are made in this country using imported parts. Spare satellites are to be stored in a foreign-trade zone until they are needed. The satellite may be stored for more than five years before being launched. Because of the sometimes lengthy storage period, it is necessary to test thoroughly each satellite before it is launched. Often, as a result of flaws discovered during this testing, it is necessary to rework those satellites too.

Law and analysis: Section 146.22(a), Customs Regulations, states that privileged-domestic status may be granted to merchandise that is manufactured in the United States as well as duty-paid foreign merchandise. Generally, a communications satellite made in the United States using foreign components is considered to be a manufacture of the United States. Because subparagraph (2), of section 146.22(a), clearly permits products wholly of foreign origin privileged domestic status if any applicable duty or tax is paid, a satellite made in this country with duty-paid foreign parts is entitled to privileged domestic status in a zone, even if the assembly process is not considered to be a manufacture. Since section 146.25(a) provides for zone-restricted status only on proper application, it is clear that the provision is optional with the person who admits goods into a zone. Zone-restricted status is not mandatory; the benefits of that status do not accrue unless the application for zone-restricted status is made and granted.

Section 1313(i), Tariff Act of 1930, as amended, provides that no drawback is allowable unless the completed article is exported within five years after importation of the imported merchandise. The pertinent part of the fourth proviso of section 81c, Tariff Act of 1939 as amended,

provides that merchandise taken into a zone from Customs territory for the sole purpose of exportation, destruction, or storage shall be considered to be exported for the purpose of drawback. The sixth proviso to section 81c provides for the exportation of merchandise from a zone, so it is clear that Congress did not consider that admission into a zone under the fourth proviso to be an actual exportation of the article; instead, the article is given the benefit of drawback even though it is not actually exported. Exportation requires a severance from the commerce of this country with the intention of placing the article into the commerce of another country. To gain the benefit of the fourth proviso, an application for admission under that provision must be made. There is nothing in section 81c to indicate the five-year period set in section 1313(i) was to be suspended during the period that an article otherwise entitled to drawback is in a zone. The only qualification made by section 81c is that if a person wishes to obtain the benefits of drawback without actually exporting the article, the person may do so by placing the article into the zone in zone-restricted status. A person cannot obtain that benefit without accepting the detriments of zone-restricted status. Section 81c only complements section 1313(i); it does not supersede it.

Section 146.47(a), Customs Regulations, enumerates the only types of entries that may be made for zone-restricted merchandise, absent a ruling of the Foreign-Trade-Zones Board permitting domestic consumption. Because, in the absence of such a ruling, zone-restricted merchandise may not be entered into American commerce, removal under the temporary-importation-under-bond procedure is not permitted. The types of entries set in section 146.47(a) contemplate Customs custody over the article until it is actually destroyed or exported; merchandise temporarily imported under bond is released to the custody of the importer. Such a release increases the possible diversion of zone-restricted merchandise into American commerce in derogation of the requirements of the fourth proviso of section 81c.

A decision dated July 16, 1968, which was published in abstract format as T.D. 68–206(1), held that satellites owned and controlled by an international organization which are launched so that they are permanently removed from the United States and are in international commerce are exported for drawback purposes.

Holdings: 1. Privileged-domestic status may be granted to satellites made in the United States with the use of duty-paid foreign parts that are to be stored in a foreign-trade zone.

2. The five-year period for exportation set in section 1313(i), Tariff Act of 1930, as amended, is not suspended for merchandise stored in a foreign-trade zone pending exportation.

3. Zone-restricted merchandise may not be removed from a foreign-trade zone by means of a temporary importation under bond.

4. The launching of a satellite, under the circumstances set forth in the decision dated July 16, 1968, an abstract of which was published as T.D. 68–206(1), is an exportation for drawback purposes.

U.S. Customs Service

General Notice

(19 CFR Chapter I)

Notice of Proposed Revision of the Customs Bond Structure and Solicitation of Comments

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revision of the Customs bond structure and solicitation of comments.

SUMMARY: Customs is considering an extensive revision of its bond structure to consolidate and reduce the number of bond forms now in use. The purpose of the proposal is to simplify transactions between Customs and the importing public and to facilitate establishment of an efficient computerized bond control system. If the proposal is adopted, numerous amendments to the Customs Regulations will be necessary and will be the subject of a notice of proposed rulemaking published in the Federal Register. The public is invited to comment on the merits of the proposal and to suggest alternatives to the proposed bond format, coverages, and conversion approaches.

DATES: Comments must be received on or before (60 days from the date of publication in the Federal Register).

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations and Information Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joseph C. Goody, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5307).

SUPPLEMENTARY INFORMATION:

BACKGROUND

When merchandise other than noncommercial merchandise accompanying a traveler arrives in the United States, it ordinarily remains in Customs custody until the importer, consignee, or the

authorized agent of either, establishes ownership and complies with the applicable Customs laws and regulations or laws and regulations enforced by Customs for other Federal and State agencies. In some instances, especially in the case of duty-free noncommerical importations, the merchandise may be released to the importer, consignee, or an authorized agent merely upon furnishing proof of ownership, and no formal documentation is required. However, in most cases involving commercial importations, formal documentation is required to obtain release of the merchandise. The Customs transaction releasing the merchandise to the importer is referred to as an "entry".

As a part of the entry documentation, the importer, consignee, or an authorized agent usually is required to file a bond with Customs. The bond, among other things, guarantees that proper entry summary, with payment of estimated duties and taxes when due, will be made for imported merchandise and that any additional duties and taxes subsequently found to be due will be paid. The bond also guarantees redelivery of imported merchandise to Customs custody for examination or inspection if found not to comply with applicable laws and regulations. Redelivery may be required as a result of a failure to properly mark, label, clean, or fumigate the imported merchandise; or a failure to destroy or export the imported merchandise, if appropriate.

A bond also may provide, as a condition of its satisfaction, for the production of any missing invoices, declarations, certificates, or other documents required in connection with the entry of imported merchandise, in the form and within the time required.

Bonds are used to secure other Customs transactions besides those of importers. For example, carriage of imported merchandise that has not been examined or appraised by Customs must be secured by a Customs bond to guarantee performance of various Customs obligations. Those performance bonds are required from bonded carriers, bonded cartage and lighterage operators, and persons who are authorized to carry merchandise when bonded carrier facilities are not reasonably available. Among other things, those persons are contractually bound to safely deliver that merchandise to Customs at the destination. They are bound to report arrival of the merchandise to Customs at the destination so that it can be examined for Customs purposes. They are bound not to deliver that merchandise to the ultimate consignee until Customs determines that it can be released. If the bond principal fails to perform as agreed, the principal and surety become liable for payment of liquidated damages.

A similar situation exists for persons who operate Customs bonded warehouses, container stations, and foreign-trade zones. A bond from these people is needed to protect the Government from loss.

Generally, imported merchandise is placed in such places before the amount of duty due has been determined. Moreover, until that merchandise is withdrawn for consumption, no duty is paid by the importer. The bond given by such persons serves as a guarantee that the stored merchandise will be kept safely and that it will be released only when authorized to do so by Customs.

Other bonds are required in special instances. For example, persons who use the accelerated drawback program are required to file a bond to guarantee repayment of any money erroneously paid. Another special bond is that required of copyright owners who claim that an imported article infringes their copyright and request Customs to detain that article pending a final determination on the infringement claim. That bond insures that any damage caused to the importer by detention will be corrected.

Presently, there are approximately 50 different forms of Customs bonds in use. Part 113, Customs Regulations (19 CFR Part 113), sets forth a description of the various bonds and the general requirements applicable to Customs bonds. It contains the general authority and powers of the Commissioner of Customs to require bonds, the classes of bonds, procedures for their approval and execution, general and special bond requirements, requirements which must be met to be either a principal or a surety, requirements concerning the production of documents, and the authority and manner of assessing damages and of canceling the bond or charges against a bond.

Customs is considering an extensive revision of its existing bond structure to consolidate the number of bond forms and to establish an efficient computerized bond control system. As part of the revision process, discussions have been held with representative segments of the importing community. A number of suggestions received during these discussions have been incorporated into this document.

The purpose of this notice is to afford the public a further meaningful opportunity to participate at an early stage in the revision process by submitting comments on the merits of the proposal and by suggesting alternatives to the proposed bond format, coverages, and conversion approaches.

TYPES OF BONDS

Under the proposal, two types of Customs bonds, designated "single transaction" and "multi-transaction" would be established.

1. *Single Transaction:* The single transaction bond would be used for one transaction at a specific port under the same conditions as a single entry bond currently is being used and would require the approval of the district director at the port where filed.

2. *Multi-Transaction:* The multi-transaction bond would replace

present term, blanket, and consolidated bonds and be used for many transactions over a definite period of time. It also would replace the continual type bonds which cover conditions of a continuing nature, such as, carriage of merchandise and establishment of warehouses. This would be similar to, but a more general type application of, the existing Consolidated Aircraft Bond, Customs Form 7605.

An amount associated with each condition referred to on the multi-transaction bond would represent the liability limit for that specific condition. It is anticipated that each condition would be self-contained and appear in a separate section or subsection of the Customs regulations.

The bond contract would remain in full force and effect for one year commencing on the effective date shown on the bond and for each succeeding annual period, or until terminated. Current Customs policy prohibiting the discontinuance of bond coverage before the end of the initial term unless good cause is shown and Customs concurs would not be changed.

At least 60 days before the bond anniversary date, Customs would issue a courtesy notice advising the principal that the bond would terminate on the anniversary date unless the principal notifies Customs by returning the notice, or otherwise advises Customs in writing, at least 30 days before the bond expiration date, of its intent to continue the contract. Thus, notification of premium payment on the bond would be sufficient to renew a bond contract for another term.

If a party to the bond contract intends to terminate the contract, that party would be required to notify the other parties to the contract and Customs in writing at least 30 days before the effective date of the termination.

In order that small importers will not be required to purchase more coverage than necessary, it is proposed to create two classes of coverage within the multi-transaction type bonds, the *national class* and the *district class*. The *national class*, at the option of the principal, would include all or specific transactions of a particular principal on a nationwide basis. The *district class*, at the option of the principal, would include all or specific transactions of a particular principal within one district. For example, term bonds which currently are filed on a port level would be consolidated into one district bond. The conditions of this class of bond could be the same as those of a national bond except that the scope of coverage would be limited to one district and the minimum amount of bond required could be less than the minimum amount required on a national bond. In keeping with existing Treasury Department directives and Customs policy, customhouse brokers would not be approved as principals on a national class bond to be used in their capacity as brokers. In addition, this would not change current policy which permits a licensed

customhouse broker to be approved as a principal on a national class bond to cover the entry of merchandise actually owned by the broker.

Appendix A to this document lists the Customs bonds currently in use. Whenever possible it is intended to eliminate unnecessary conditions in the proposed bond structure.

Bond Forms

Under the proposal, there would be one standardized bond form for the single transaction and multi-transaction bonds. This standardized bond form, as it might appear, is set forth as Appendix B to this document. A space would be provided on the bond form where the conditions covered by the bond and the related surety liability limit would be indicated. Standardized conditions would be enumerated in the Customs Regulations (19 CFR Chapter I). This procedure would eliminate repeating the similar conditions currently contained in the various Customs bonds. If the proposal is adopted, the Customs Regulations would be revised to incorporate all bonding requirements into the same part in 19 CFR Chapter I. In conjunction with this revision, the bond conditions will be clarified and the language modernized and simplified. Appendix C contains some specific examples of conditions which currently appear in Customs bonds and how they may be written in more modern and simplified language.

Customs Form 53, "Bond Transcript", would continue to be required, but the form might be revised as illustrated in Appendix D to this document. Customs Form 53 would be filed with each bond submitted for approval whether the bond is supported by surety, cash, or other acceptable security.

Based on the comments received and if our continuing analysis indicates it is feasible, the specific information unique to the Customs Form 53 will be incorporated into the proposed standardized bond form. Thus, the "Bond Transcript" would be discontinued. The standardized bond form, as it might appear under these circumstances, is set forth as Appendix E to this document.

Bond Modification

Current Customs policy permitting the addition of principals to bonds and name and address changes after bond approval would not change. Any other bond contract change would require the termination of the old bond and filing of a new bond, as currently prescribed in section 113.23(d), Customs Regulations (19 CFR 113.23(d)).

Bond Control

A computerized bond control system would be implemented in conjunction with the Customs bond proposal. The proposal would

reduce the number of bonds required by a principal to conduct Customs business and thus facilitate the efficient operation of the computerized system.

Under the computerized system, data would be verified and validated, and computer files would be updated, soon after a transaction is entered into the system via a terminal. Routine, time consuming tasks which are a necessary part of the bond approval procedure would be automated to speed up the approval process. For example, the lead time currently required for filing a bond and related transcript before its effective date would be reduced significantly.

To improve querying and locating bonds, each bond would be assigned a nine digit control number. The first two digits would identify the district where the bond is filed. The last seven digits would be a serial number control uniquely identifying the bond within the district plus a check digit. This bond number would appear on all copies of the bond, whether it is a Customs bond form or a privately printed bond form. Thus, just by knowing the bond number, interested individuals would be able to determine where the bond contract is located physically.

The computerized system would provide increased revenue protection and improve the timely availability of information to authorized officials on a "need to know" basis. In addition, the computerized system would allow bonding procedures to be standardized nationwide. Through the interaction between the bond processing system and other Customs computer processing systems, bond and bond related information would be available to authorized officials on a consolidated basis.

Conversion to the New Bond Structure

To fulfill the Customs objective of establishing the new bond structure and related control system with the least adverse impact on Customs and affected parties, two conversion approaches are being considered.

The first approach would provide for a 90- or 120-day transition period during which all bonds would be terminated and replaced by bonds utilizing the new format. Existing term-type or continual-type bonds not replaced by bonds utilizing the new format would not be considered valid by Customs at the end of the 90- or 120-day transition period.

The second approach would consist of the following alternatives:

1. If a party has only a continual-type bond filed with Customs, a transition period would be provided during which a bond utilizing the new format would be filed in accordance with the procedure stated in the first approach.

2. If a party has more than one term-type bond in effect, the expiration date of the existing bond with the latest termination date would become the replacement control date. Customs would announce the date principals would be required to determine the replacement control date. Applicable replacement control dates thus would be established for the entire importing community at the same time.

Once a replacement control date has been established for an individual or firm, Customs would not approve any bond submitted under the old bond format when the term of that bond would be effective beyond the replacement control date.

3. If a party has a term and continual-type bond in effect, the continual-type bond would be terminated as of the replacement control date established for the term-type bond. A bond in the new format would be filed after the replacement control date.

COMMENTS

Customs invites written comment (preferably in triplicate) from all interested parties on the bond revision proposal.

Commenters should address themselves, among other things, to (1) the proposed format for the bond form, (2) the proposed format for consolidating the bond conditions in the regulations, as well as recommendations for alternative formats, (3) the proposed approaches for conversion to the new system as well as suggestions for additional approaches and (4) the advantages or disadvantages of the new system as it impacts on their operation.

Comments submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), on regular business days between 9:00 a.m. and 4:30 p.m. at the Regulations and Information Division, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

EXECUTIVE ORDER 12291

This document will not result in a regulation which is a "major rule" as defined by section 1(b) of Executive Order 12291.

REGULATORY FLEXIBILITY ACT

It appears that the rule, if promulgated, may have a significant economic impact on a substantial number of small entities, and thus require an initial regulatory flexibility analysis in accordance with

the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 603). The Customs Office of Economic Analysis is in the process of determining whether such an analysis is indeed necessary. Accordingly, if it is decided to proceed with this matter, the notice of proposed rulemaking will have as an attachment (1) the initial regulatory flexibility analysis or (2) a certification by the Secretary of the Treasury that the analysis is not, in fact, required by the Act.

AUTHORITY

This document is issued under the authority of R.S. 251, as amended (19 U.S.C. 66), and sections 623, as amended, 624, 46 Stat. 759 (19 U.S.C. 1623, 1624).

DRAFTING INFORMATION

The principal author of this document was John Elkins, Regulations and Information Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

Approved: May 4, 1981.

JOHN P. SIMPSON,
Acting Assistant Secretary of the Treasury.

APPENDIX A

The purpose of this appendix is to aid interested parties to compare the bond forms they presently use with the proposed new bond structure formats and concepts embodied in Appendix B, C, and E. The following list indicates the various activities, conditions, and obligations of Customs bonds currently in use. This appendix is for example purposes and subject to change.

Single transaction

1. CF 4615, Bond of Claimant of Seized Goods for Costs of Court.
2. CF 7303, Bond to Produce Manifest and Shipper's Export Declaration for Goods exported to Canada.

Multitransaction

1. CF 3583, Proprietor's Manufacturing Warehouse Bond (Class 6).
2. Blanket Smelting and Refining Bond.

Single transaction	*Multitransaction*
3. CF 7547, Special Single Entry Carpet Wool and Camel's Hair Bond.	3. Public Gauger's Bond.
4. CF 7551, Immediate Delivery and Consumption Entry Bond (Single Entry).	4. CF 3851, Proprietor's Warehouse Bond.
5. CF 7555, Warehouse Entry Bond.	5. CF 3587, Carriers Bond.
6. CF 7557, Bond for Exportation or Transportation or for Transportation and Exportation (Single Entry).	6. CF 3588, Private Carrier's Bond.
7. CF 7561, Bond for Articles Entered or Withdrawn from Warehouse Conditionally Free of Duty.	7. CF 3855, Bond of Customs Cartman or Lighterman.
8. CF 7563, Bond for Temporary Importations.	8. CF 7303, Bond to Produce Manifest and Shipper's Export Declaration for Goods Exported to Canada.
9. CF 7565, Exhibition Bond.	9. CF 7549, Special Bond-Wool or Hair of the Camel (Term).
10. CF 7567, Vessel, Vehicle or Aircraft Bond (Single Entry).	10. CF 7553, Immediate Delivery and Consumption Entry Bond (Term).
11. CF 7571, Bond on Entry for or Withdrawal from Manufacturing Warehouse.	11. CF 7559, Bond for Exportation or Transportation or for Transportation and Exportation (Term).
12. CF 7581, Bond to Produce Bill of Lading (Single Entry).	12. CF 7587, Bond for the Control of Certain Instruments of International Traffic.
13. CF 7593, Landing Bond.	13. Bond for the Control of Identified Shipping Containers.
14. CF 7597, Bond for Use in Connection with Requests for Overtime Services Made by or on Behalf of Owners or Consigness of Merchandise (Single Entry).	14. CF 7563–A, Bond for Temporary Importations (Term).

Single transaction	*Multitransaction*
15. CF 7601, Bond of Actual Owner to Cover the Payment of Increased and Additional Duties and Taxes, the Redelivery of Prohibited Merchandise, the Marking of Merchandise under Customs and Related Laws, and for other Purposes.	15. CF 7569, Vessel, Vehicle, or Aircraft Bond (Term).
16. CF 7603, Bond for Conditionally-Free Withdrawal of Distilled Spirits (Including Alcohol) Wines, or Beer, for Supplies of Fishing Vessels (Single Entry or Term).	16. CF 7595, General Term Bond for Entry of Merchandise.
17. CF 7609, Bond for Accelerated Payment of Drawback (Single Entry).	17. CF 7599, Bond for Use in Connection with Request for Overtime Services Made By or on Behalf of Parties in Interest (Term).
18. Special Bond for Entry Merchandise Believed to Involve Unfair Practices.	18. CF 7603, Bond for Conditionally-Free Withdrawal of Distilled Spirits, (Including Alcohol) Wines, or Beer, for Supplies of Fishing Vessels (Single Entry of Term).
19. Special Bond, for the Clearance of Vessels Penalized for Carrying Narcotics.	19. CF 7605, Air Carrier Blanket Bond.
20. Special Bond for the Observance of Neutrality.	20. CF 7611, Bond for Accelerated Payment of Drawback (Term).
21. Copyright Bond.	21. CF 7613, Drawback Export Bond.
22. Special Bond for the Importation of Flammable Fabrics.	22. Containerized Cargo Bond (Term).
23. Special Performance Bond.	23. Trade Fair Bond.
24. Bond of Customs Cartman for Issuance of Temporary Identification Card.	24. Special Performance Bond.
	25. Foreign Trade Zone Operator's Bond.

APPENDIX B

This is an example of the form a bond might take under the new bond structure. This bond would be a two-page single sheet, 8½ by 11 form.

CUSTOMS BOND

Bond Number ___

In order to secure payment of duty, tax or charge and compliance with law or regulation as a result of activity covered by any condition referenced below, _____, as principal, and _____, as surety bond themselves to the United States in an amount, or amounts as set forth below.

SECTION I (check one box and fill the applicable blank spaces)

☐ Single Transaction Bond—
Date of Arrival _____ Place of Arrival _____
Entry No. _____ Date of Entry _____

☐ District Class—Principal expects to conduct business in District of _____

☐ National Class—Applicable at all Customs locations

A multi-transaction bone remains in force for one year beginning _____ 19__. For each succeeding annual period, or until terminated, it constitutes a separate bond for each period at the amounts listed below for any liability that accrues in each period.

A multi-transaction bond cannot be unilaterally terminated before the first anniversary date of the bond unless a party thereto can show sufficient cause and Customs concurs. The intention to terminate or renew this bond coverage must be conveyed within the time period and manner prescribed in the Customs Regulations.

SECTION II (fill in as indicated—see Customs Regulations for coverage available)

Activity code	Activity name	Conditions codified in Customs Regulations	Limit of liability

SECTION III (Coverages in addition to the minimum coverage in section II)

Activity code	Activity name	Conditions in Customs	Codified Regulations	Limit of liability

Witness our hands and seals this day of , 19 .

Principal and Surety agree that they are bound to the same extent as if they executed a separate bond covering each of the set(s) of conditions set forth herein.

In no event shall the liability of the Surety for any and all claims under one set of bond conditions exceed the limit of liability specified for that particular set of bond conditions.

If surety fails to appoint an agent under section 7, title 6, U.S. Code, surety consents to service on the clerk of any U.S. District Court or the U.S. Court of International Trade, where suit is brought on the bond. That clerk is to send notice of the service to surety at:

_____

(mailing address requested by the surety)

Signed, sealed, and delivered in the presence of—

_____

Name Address (Witness)

_____

Name Address (Witness)

_____

Name Address (Principal) (SEAL)

_____

Name Address (Surety) (SEAL)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, , certify that I am the secretary of the corporation named as principal in the within bond, that , who signed the said bond on behalf of the principal, was then of said corporation; that I know his signature, and his signature thereto, is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

(CORPORATE SEAL)

NOTE.—The above certificate to be used when no power of attorney has been filed with the District Director of Customs.

Schedule of Specific Activities and Minimum Coverage for the Principals

Code	Name	Activity—The conditions set forth in the Customs Regulation sections shown are required for the related activity [1]
1	Importer (brokers)	113.71.
2	Internat'l carriers	113.72, 113.98, 113.103.
3	Bonded carrier	113.73, 113.98, 113.104, 113.105, 113.106, 113.108.
4	Cartmen and lighterman	113.74, 113.98, 113.104.
5	Private carrier	113.73, 113.98, 113.104, 113.105, 113.107, 113.108.
6	Class 2, 3, 4, 5, and 8 warehouse operator.	113.75, 113.109, 113.110.
7	Class 6 warehouse operator	113.76, 113.109, 113.110, 113.112.
8	Class 7 warehouse operator	113.71, 113.77, 113.84, 113.110, 113.112.
9	Container station operator	113.87, 113.98, 113.108.
10	Foreign trade zone operator	113.79.

[1] For additional bond coverage available, refer to Part 113, Customs Regulations.

NOTE.—The section numbers shown are for illustration purpose only.

APPENDIX C

Examples of modernized and simplified bond conditions as ıthey currently appear on customs bonds and as they might appear under the proposal.

Examples of modernized and simplified bond conditions as they currently appear on customs bonds and as they might appear under the proposal.

1. Condition 1 of CF 7553, Immediate Delivery and Consumption Entry Bond.

The above-bounden principal, in consideration of the release of all or any part of such shipments as may be charged against this bond before the full amount of duties and taxes imposed upon or by reason of importation has been finally determined, and notwithstanding section 485(d), Tariff Act of 1930, or any other provisions of law, voluntarily undertakes and agrees to pay any and all such duties and taxes found to be due on each entry in question, but not in excess of the amount of this bond, upon condition that no other provision of

this bond shall be invoked for the purpose of enforcing the collection of such duties and taxes and upon the further condition that this obligation to pay any and all such duties and taxes found to be due on the shipment (not exceeding the amount of this bond) shall become null and void and of no force and effect as to any entry on and after the date on which the above-bounden principal files with the district director in the manner and within the time prescribed by the regulations a superseding bond on Customs Form 7601 of the owner whose declaration has been filed in accordance with the provisions of section 485(d), in which bond the owner undertakes and agrees to pay any and all such duties and taxes found due on the shipment covered by the above-mentioned entry.

PROPOSED LANGUAGE

Agreement to pay duties

If principal enters merchandise at any port during the bond period and gets release of all or part of the merchandise before Customs determines the quantity and value of the merchandise and the full amount of duties and taxes due, obligors (principal and surety), on demand by the notice of liquidation, agree to pay any duty and tax, due on any entry charged against this bond. This obligation to pay ends as to any entry on the date when principal timely files with the district director a superseding bond of the owner whose declaration has been properly filed, in which superseding bond the owner agrees to pay any duty and tax due on that entry.

2. Conditions 4, 5 and 6 of CF 7553, Immediate Delivery and Consumption Entry Bond.

And if in any case the above-bounden principal shall redeliver or cause to be redelivered to the order of the district director of Customs, on demand by him, in accordance with the law and regulations in effect on the date of the release of said articles, any and all merchandise found not to comply with the law and regulations governing its admission into the commerce of the United States, unless before such demand the said principal shall have filed with the district director of Customs a superseding bond on Customs Form 7601 in which the actual owner whose declaration has been filed pursuant to section 485(d), Tariff Act of 1930, shall have undertaken upon proper demand on such owner to effect such redelivery; or, in default of redelivery after a proper demand on him, the above-bounden principal shall pay to the said district director such amounts as liquidated damages as may be demanded by him in accordance with the law and regulations, not exceeding the amount of this obligation, for any breach or breaches thereof;

And if in any case the above-bounden principal, in respect of any of the merchandise released from Customs custody, shall redeliver or cause to be redelivered to the order of the district director of Customs such additional packages or quantities of merchandise pursuant to section 499, Tariff Act of 1930, as amended, for the purpose of examination, inspection, or appraisement, upon a demand made at any time before the report of appraisement, unless before that time the said principal shall have filed with the district director of Customs a superseding bond on Customs Form 7601 in which the actual owner whose declaration has been filed pursuant to section 485(d), Tariff Act of 1930, shall have undertaken upon proper demand on such owner to effect redelivery for such purposes; or, in default of redelivery after a proper demand on him, the above-bounden principal shall pay to the said district director such amounts as liquidated damages as may be demanded by him in accordance with the law and regulations, not exceeding the amount of this obligation, for any breach or breaches thereof;

And if in any case the above-bounden principal shall redeliver or cause to be redelivered to the order of the district director of Customs for marking pursuant to the provisions of paragraph 367 or 368, or section 304, Tariff Act of 1930, as amended, upon a demand made not later twenty (20) days after the report of appraisement, such of the merchandise as may have been released from Customs custody, unless before that time the said principal shall have filed with the district director of Customs and bond on Customs Form 7601 in which the actual owner whose declaration has been filed pursuant to said section 485(d) shall have undertaken upon proper demand on such owner to effect redelivery for such purposes; or, in default of redelivery after a proper demand on him, the above-bounden principal shall pay to the said district director such amounts as liquidated damages as may be demanded by him in accordance with the law and regulations, not exceeding the amount of this obligation, for any breach or breaches thereof.

PROPOSED LANGUAGE

Agreement to redeliver merchandise

If merchandise is released conditionally to principal before all required evidence is produced, before its quantity and value are determined, or before its right of admission into the United States is determined, principal agrees to redeliver timely the merchandise released to the principal on demand by Customs if the merchandise—

(i) fails to comply with the laws or regulations governing admission to the United States;

APPENDIX D

BOND TRANSCRIPT
(Proposed)

PAGE: OF:

1. PRINCIPAL'S NAME AND ADDRESS	2. CARRIER DESIGNATION	3. BOND NUMBER
		4. PRINCIPAL'S IMPORTER NUMBER

5. SURETY NUMBER	6. SURETY AGENT SOC. SEC. NO.	7. SURETY AGENT NAME

8. BOND EFFECTIVE DATE	9. BOND EXECUTION DATE	10. BOND CLASS (DIST/NAT'L)	11. DISTRICT/PORT NAME

12. TERMINATION (Complete Blocks 1 thru 13)

☐ CHECK HERE TO APPLY FOR TERMINATION OF A BOND ON FILE. SUBMIT SIGNED REQUEST, PROPERLY DOCUMENTED, TO DISTRICT DIRECTOR WHERE BOND WAS FILED. SHOW REQUESTED DATE OF TERMINATION.

Requested Date of Termination: M M D D Y Y

13. BOND TYPE

14. CONDITIONS/AMOUNTS:	COND.	AMOUNT	COND.	AMOUNT	COND.	AMOUNT	COND.	AMOUNT	COND.	AMOUNT
	COND.	AMOUNT	COND.	AMOUNT	COND.	AMOUNT	COND.	AMOUNT	COND.	AMOUNT

LIST BELOW ALL ADDITIONAL NAMES ON THE BOND OF PRINCIPALS AND THOSE UNDER WHICH THE PRINCIPALS DO BUSINESS INCLUDING THEIR ACCOUNT NUMBER(S).

15. TOTAL IMPORTERS LISTED:

16. IMPORTER NUMBER	17. IMPORTER NAME	16. IMPORTER NUMBER	17. IMPORTER NAME

18. CODE(S) OF RIDER(S) ATTACHED TO BOND

☐ NO RIDERS INCLUDES RIDERS: ☐☐☐

19. BOND HOLDER'S SIGNATURE DATE

20. CERTIFICATION BY U.S. CUSTOMS:

APPROVED BY:

DISTRICT:

Proposed Customs Form 53 (12-14-79)

(ii) must be examined, inspected, or appraised as required by section 449, Tariff Act of 1930, as amended; or

(iii) must be marked as required by Headnote 4, Part 2E, Schedule 7, Tariff Schedules of the United States, or by section 304, Tariff Act of 1930, as amended.

If principal defaults obligors agree to pay liquidated damages as may be demanded by Customs. This obligation to redeliver ends as to any entry on the date when principal timely files a superseding bond of the owner whose declaration to so redeliver has been properly filed.

APPENDIX E

This is an example of the form a bond might take under the new bond structure. This bond would be a four page, single sheet, 8½ by 22 folded to 8½ by 11 form.

CUSTOMS BOND

Bond Number __

In order to secure payment of duty, tax or charge and compliance with law or regulation as a result of activity coverage by any condition referenced below (Principal's Name and Importer No.) _____ ____, as principal, and (Surety Name and No.), _____, as surety bind themselves to the United States in the amount or amounts, as set forth below.

SECTION I (Check one box and fill the applicable blank (spaces)

☐ Single Transaction Bond—
Date of Arrival _____ Place of Arrival _____
Entry No. _____ Date of Entry _____

☐ District Class—Principal expects to conduct business in District of _____

☐ National Class—Applicable at all Customs locations

A Multi-Transaction bond remains in force for one year beginning _____, 19__. For each succeeding annual period, or until terminated, it constitutes a separate bond for each period at the amounts listed below for liability that accrues in each period.

A Multi-Transaction bond cannot be unilaterally terminated before the first anniversary date of the bond unless a party thereto can show sufficient cause and Customs concurs. The intention to terminate or renew this bond coverage must be conveyed within the time period and manner prescribed in the Customs Regulations.

SECTION II (fill in as indicated—see Customs Regulations for coverage available [1])

Activity code	Activity name	Conditions codified in Customs Regulations	Limit of liability

SECTION III (Coverages in addition to the minimum coverage in SECTION II)

Activity code	Activity name	Conditions codified in Customs Regulations	Limit of liability

Section IV List below all tradenames or unincorporated divisions including their account number(s).

15. Total Importers Listed:

Importer number	Importer name	Importer number	Importer name

Principal and surety agree that any charge against the bond in any of the listed names is as though it was made by the principals.

Witness our hands and seals this _____' day of _____', 19 __ (execution date).

Principal and surety agree that they are bound to the same extent as if they executed a separate bond covering each of the set(s) of conditions set forth herein.

In no event shall the liability of the surety for any and all claims under one set of bond conditions exceed the limit of liability specified for that particular set of bond conditions.

If the surety fails to appoint an agent under section 7, Title 6, United States Code, surety consents to service on the Clerk of any United States District Court or the U.S. Court of International Trade, where suit is brought on this bond. That clerk is to send notice of the service to surety at:

_____

(mailing address requested by the surety)

Signed, sealed, and delivered in the presences of—

Name	Address	(Witness)	
Name	Address	(Witness)	
Name	Address	(Principal)	(SEAL)
Name	Address	(Surety)	(SEAL)
Name Surety Agent		Agent Social Security No.	

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ secretary of the corporation named as principal in the within bond, that _____, who signed the said bond on behalf of the principal, was than _____— of said corporation; that I know his signature, and his signature thereto, is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

_____ (CORPORATE SEAL)

NOTE.—The above certificate to be used when no power of attorney has been filed with the District Director of Customs.

Schedule of Specific Activities and Minimum Coverage for the Principals

Code	Name	Activity—The conditions set forth in the Customs Regulation sections shown are required for the related activity [1]
1	Importer (brokers)	113.71.
2	Internat'l carriers	113.72, 113.98, 113.103.
3	Bonded carrier	113.73, 113.98, 113.104, 113.105, 113.106, 113.108.
4	Cartmen and lighterman	113.74, 113.98, 113.104.
5	Private carrier	113.73, 113.98, 113.104, 113.105, 113.107, 113.108.
6	Class 2, 3, 4, 5, and 8 warehouse operator	113.75, 113.109, 113.110.
7	Class 6 warehouse operator	113.76, 113.109, 113.110, 113.112.
8	Class 7 warehouse operator	113.71, 113.77, 113.110, 113.112.
9	Container station operator	113.87, 113.98, 113.108.
10	Foreign trade zone operator	113.79.

[1] For additional bond coverage available, refer to Part 113, Customs Regulations.

NOTE.—The section numbers shown are for illustration purposes only.

INSTRUCTIONS

This part of the form will contain a detailed explanation of how to fill out the form.

United States Court of International Trade

Decisions of the United States Court of International Trade

(Slip Op. 81–42)

ST. PAUL FIRE AND MARINE INSURANCE COMPANY, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 76–11–02515

On Defendant's Motion to Dismiss

(Dated May 11, 1981)

Wayne Jarvis, Ltd. (*Wayne Jarvis* and *Michael G. Hodes* of counsel) for the plaintiff.

Thomas S. Martin, Acting Assistant Attorney General; *Joseph I. Liebman* Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*John J. Mahon* on the briefs), for the defendant.

MALETZ, *Judge:* The facts in this case are exceedingly simple. Plaintiff was a surety for two importers, Carnival International Corp. of New York, N.Y., and Heller International, Inc. of Los Angeles, Calif. On March 8, 1974, an entry of Carnival was liquidated resulting in an increase in duty of $1,280.50, and on January 10, 1975, an entry of Heller was liquidated resulting in an increase of duty of $66.99. No protest was ever filed by any party contesting the liquidation of these entries and it is undisputed that the liquidations were proper in all respects.

Carnival and Heller, however, failed to pay the increased duties owing on these two liquidated entries. In that circumstance on December 30, 1975, the Customs Service, pursuant to section 24.72 of the Customs Regulations, applied certain sums otherwise due plaintiff as a result of its status as surety in other transactions not related to this action to the obligations of Carnival and Heller on the two entries in question as a result of plaintiff's status as surety on those entries.[1]

On March 30, 1976, plaintiff filed protests against these set-offs which were denied by the Customs Service in Moy 1976. Suit in this court followed. Defendant has moved to dismiss contending, among other things, that the court lacks subject matter jurisdiction of this action.

At the outset, it is to be noted that when the present action was commenced, the jurisdiction of this court to the extent relevant was limited by 28 U.S.C. § 1582(a) to civil actions involving " * * * (2) the classification and rate and amount of duties chargeable [and] (3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury * * *." Since there is no dispute about the correctness of the classification and rate and amount of duties chargeable on the two entries in question, the single issue is whether the set-offs against the plaintiff as a result of its contractual obligations as surety for unpaid customs duties on those entries constitute "charges or exactions" within the meaning of section 1582(a)(3).

In the court's view, these set-offs are not such "charges or exactions." It is clear from the structure of section 1582(a) (2) and (3) that questions relating to the duties found to be due upon liquidation constitute one subject matter category, and the imposition of charges or exactions another. Thus "[t]here is a distinction between the 'rate and amount of duties chargeable' and 'exactions,' * * *."

---

[1] Section 24.72 of the Customs Regulations (19 CFR § 24.72) provides: "When an importer of record or any other party has a judgment or other claim allowed by legal authority against the United States, and he is indebeted to the United States, either as principal or surety, for an amount which is legally fixed and undisputed, the collector shall set off so much of the judgment or other claim as will equal the amoun of the debt duet .he Government."

Puget Sound Freight Lines v. *United States*, 19 Cust. Ct. 70, 72, C.D. 1070 (1947), *aff'd*, 36 CCPA 70, C.A.D. 400, 173 F. 2d 578 (1949). In this setting, what is involved here is the collection of customs duties found to be due upon liquidation. The fact that these duties were collected from the plaintiff surety rather than the importers, Carnival and Heller, who failed to pay them, does not transform them into charges or exactions. As Judge Newman of this court explained in *Alberta Gas Chemicals, Inc.* v. *Blumenthal*, 82 Cust. Ct. 77, 81, C.D. 4792, 467 F. Supp. 1245, 1249–1250 (1979), the terms "charges and exactions" "have been applied to actual assessments of specific sums of money (*other than ordinary customs duties*) on imported merchandise." [Emphasis added.] This case involves just that—"ordinary customs duties"—which cannot be considered "charges or exactions" within the context of section 1582(a)(3).

Moreover, it is established that a demand for payment of duties previously found due upon liquidation cannot constitute an "exaction" against which a protest may be filed under 19 U.S.C. § 1514.[2] *United States* v. *Mexican Petroleum Corp.*, 28 CCPA 90, 96, C.A.D. 130 (1940); *Schenley Import Corp.* v. *United States*, 28 Cust. Ct. 170, 173, C.D. 1405 (1952); *Hiram Walker & Sons, Inc.* v. *United States*, 25 CCPA 189, T.D. 49293 (1937); *United States* v. *Andrews & Co.*, 14 CCPA 62, 64 T.D. 41576 (1926). Manifestly, if the demand for paying of previously liquidated duties cannot constitute a protestable "exaction," neither can the actual collection of those duties, whether collection is by set-off or otherwise.

Plaintiff argues though that it is not attacking the prior liquidaliquidations but rather is challenging "an independent transaction involving an exaction against a party who is not an importer and who questions the legal basis upon which its property was taken to satisfy another's duty liability." Stated otherwise, plaintiff is arguing in effect that its property was taken without process. But this argument proves too much. For if plaintiff believes it is not legally responsible for the amount of the unpaid Customs duties involved in the two liquidated entries in this case, it is in the wrong forum. The proper court in which to contest that issue is the district court or the Court of Claims, not this court. See, e.g., *Puget Sound Freight Lines* v. *United States*, *supra*, 36 CCPA at 78, 173 F. 2d at 583–584.

For the foregoing reasons, defendant's motion to dismiss for lack of subject matter jurisdiction is granted and the action is hereby dismissed.[3]

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[2] When the present action was commenced, 19 U.S.C. § 1514(a) provided in relevant part that protests could be filed against decision of Customs as to "* * * (2) the classification and rate and amount of duties chargeable [and] (3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury * * *." 28 U.S.C. § 1582(c) in turn deprived this court of jurisdiction unless a protest had been filed as prescribed by 19 U.S.C. § 1514.

[3] In view of this holding, it is unnecessary to consider defendant's alternative contention that plaintiff lacks standing to maintain this action.

(Slip Op. 81–43)

JAPAN EXLAN COMPANY, LTD., MITSUBISHI RAYON CO., LTD., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AMERICAN YARN SPINNERS ASSOCIATION, INTERVENOR

Court No. 80–5–00755

ASAHI CHEMICAL INDUSTRY COMPANY, LTD., PLAINTIFF *v.* UNITED STATES, DEFENDANT, AMERICAN YARN SPINNERS ASSOCIATION, INTERVENOR

Court No. 80–5–00755–S

Memorandum Opinion and Order Governing Access by Plaintiffs to Confidential Documents

(Dated May 12, 1981)

RAO, *Judge:* Plaintiffs seek discovery of certain documents (listed *infra*) submitted to the International Trade Commission (hereinafter ITC) by American manufacturers, purchasers or importers of spun acrylic yarn and documents originating with the ITC during Investigations No. 731–TA–1 (Final) and 731–TA–2 (Final with respect to spun acrylic yarns from Japan and Italy.

By cross-motion for a protective order defendant opposes access for plaintiffs to these documents on the grounds that the ITC has promised confidentiality to firms submitting business data, that release of this information would seriously hamper the operations of the ITC, and that plaintiffs have not evidenced a need for the information in the documents. In support of its position, defendant has submitted the affidavit of E. William Fry, Director of Investigations for the ITC, to the effect that a promise of confidentiality is given to each supplier of sensitive business information and assurances that this information will not be released voluntarily affect the willingness of sources of information to submit the data required by the ITC making valid determinations of material injury. Defendant moves that if this court permits discovery of the documents in question, the identity of the suppliers of the information be withheld by coding the names of responders to the questionnaires and those on other documents.

American Yarn Spinners Association, Intervenor (hereinafter AYSA), also opposes plaintiffs' motions, on the additional grounds that it is not clear that the documents in question are properly part of the record for purposes of judicial review and that the information was submitted to the ITC only on the express assurance that such information would be seen solely by the staff and members of the Commission.

Taking each of these arguments and weighing them against plaintiffs' right to know brings this court to the conclusion that the requested documents should be disclosed. It is where the government invokes the executive privilege that the plaintiff must show a compelling need which outweighs the government's interest in protecting the confidentiality of communications among members of an agency's or commission's staff. *See Asahi Chemical Industry Co.* v. *United States*, 1 CIT —, Slip Op. 80–5 (Nov. 20, 1980) and cases cited therein. In cases in which a plaintiff was permitted full, or limited, disclosure of business information received by the ITC under a pledge of confidentiality, no requirement to demonstrate a compelling need was placed on it. *Connors Steel Co.* v. *United States*, 85 Cust. Ct. 112, C.R.D. 80–9 (1980); *Atlantic Sugar Ltd., et al.* v. *United States*, 85 Cust. Ct. 114, C.R.D. 80–10 (1980).

The promise of the ITC that the information would be kept confidential was not and could not have been absolute, as it must appreciate that all documents submitted during and arising from an investigation would be at least potentially reviewable by this court, its staff and the Department of Justice attorneys involved in the judicial review of the ITC's findings and the conclusions drawn therefrom. We find the statement of the ITC with respect to confidentiality less than a guarantee or even an implication that the information disclosed would be safeguarded from disclosure, as evidenced in its statement in its cover sheet to the questionnaire sent to purchasers in these investigations:

> The commercial and financial data furnished in response to sections I through IV that reveal the individual operations of your firm, will be treated as confidential by the Commission to the extent such data is not otherwise available to the public and will not be disclosed except as may be required by law. The confidential information supplied by you in this questionnaire, or in connection therewith, will not be published in a manner that will reveal the individual operations of your firm.
>
> Information submitted to or gathered by the Commission in conjunction with this proceeding under section 201(a) of the Antidumping Act may be subject, after January 1, 1980, to new antidumping provisions set forth in title VII which title would be the Tariff Act of 1930 as amended by the Trade Agreements Act of 1979 (see enclosed notice).

As to AYSA's contention that it is not clear whether the documents in question are properly part of the record for purposes of judicial review, it has not specified which of the documents forwarded by the ITC are to be deemed not judicially reviewable and the grounds or reasons for such a conclusion. Absent specific reasons for contesting

the ITC's determination that the documents are properly part of the record before this court, we shall not conclude that any of them should not be made available to plaintiffs on that ground.

Turning next to defendant's request that the names of the suppliers of information be coded to protect the confidentiality of the sensitive trade information provided by manufacturers, purchasers and importers, this court concludes as follows:

The documents have been examined in camera and it has been concluded, based on the fact that none of the information contained therein is more recent than September, 1979 with most of the information adduced dating back to 1978 or earlier, that any sensitivity previously possessed by this data has become *de minimis*. Balanced against plaintiffs' right to evaluate the factors weighed by the ITC in arriving at its determination of injury, this court is of the opinion that limited disclosure should be permitted in all matters that are not sensitive, subject to the guidelines established in *Connors Steel Co.* v. *United States*, *supra*, and *Atlantic Sugar Ltd., et al.* v. *United States*, *supra*.

For the above reasons, it is

ORDERED, that the plaintiffs' motions to compel discovery be be granted, subject to the following terms:

1. The subject materials, Documents 1 and 9 through 117 listed on List No. 2, Confidential Documents Transmitted to the U.S. Customs Court [now the U.S. Court of International Trade] shall be made available to plaintiffs' counsel within 10 days of the entry of this order.

2. Plaintiffs' counsel may disclose the material only to its attorneys and office personnel working on this litigation.

3. Counsel for plaintiffs and their immediate office personnel shall neither disclose nor use this confidential information for purposes other than this litigation or any remand or appeal of this matter.

4. If, in the opinion of counsel for any party, it becomes necessary to consult with experts independent of the industry involved for purposes of evaluating the confidential information, such experts shall agree not to disclose the confidential information to anyone other than to the counsel who consulted with them or to that counsel's office personnel, and then for purposes of this litigation only, any expert so consulted shall first sign a statement submitting himself or herself to the jurisdiction of the U.S. Court of International Trade and such reasonable sanctions as

this court may deem appropriate in the event of a breach of the conditions of this order.

5. In no event shall disclosure of confidential information be made to in-house counsel or other representatives, agents, employees or servants of plaintiffs or the interested parties.

6. Counsel for plaintiffs shall maintain a record of any and all copies of confidential information made, to whom they were provided and when they are returned. All such copies shall be clearly marked as containing confidential information and that they are to be returned at the conclusion of this litigation.

7. Any documents, including briefs and memoranda, containing any of the confidential information subject to this order, which are filed with the court in this case or used for any other purpose, shall be conspicuously marked as containing information which is not to be disclosed to the public and arrangements shall be made with the clerk of this court to retain such documents under seal, permitting access only to the court, court personnel authorized by the court to have access, and counsel for the parties. Copies of all the foregoing documents, but with the confidential information deleted, shall be filed with the court at the same time that the documents containing the confidential information are filed.

8. Any briefs or memoranda containing confidential information shall be served on the other parties in a wrapper conspicuously marked on the front "Confidential—to be opened only by attorneys handling this case," and shall be accompanied by a separate copy from which the confidential information has been deleted.

9. On the conclusion of this litigation and any appeal or remand of this matter, counsel for plaintiffs and the interested parties shall [a] return all copies of the confidential documents obtained under this order and the record required to be maintained under paragraph 6 of this order, and [b] destroy all other documents (including documents held by persons authorized under this order to have access thereto) containing the confidential information.

10. Any reference to plaintiffs' counsel herein shall include any other interested party who may subsequently be granted access to such documents under protective order.

Defendant's cross-motion, to the extent that it seeks relief inconsistent with this order, is DENIED.

(Slip Op. 81–44)

ZENITH RADIO CORPORATION, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 80–5–00861

Order

(Dated May 13, 1981)

MALETZ, *Judge*: Upon consideration of plaintiff's motion to compel defendant to respond to plaintiff's first interrogatories, plaintiff's motion to compel defendant to respond to plaintiff's first request for production of documents, and defendant's opposition to those motions, and upon consideration of defendant's motion to compel plaintiff to respond to defendant's first interrogatories, defendant's motion to compel plaintiff to respond to defendant's first request for production of documents, and plaintiff's opposition to those motions, and upon all other papers and proceedings, after oral argument, the Court makes the following rulings:

I. On Plaintiff's Motion To Compel

A. Documents relating to investigation into possible violations of 19 U.S.C. 1592:

(1) Within 30 days, defendant shall make available, subject to the protective provisions contained in Part IV of this order, the documents covered by plaintiff's first request for production of documents concerning Sears, Montgomery Ward, and White Stores.

(2) Plaintiff will make application within 15 days to the United States District Court for the Eastern District of Virginia for an order modifying that court's protective order entered on April 23, 1980, in *In Re 1978 Grand Jury Proceedings J. C. Penney Company, Inc.*, and authorizing the defendant to make available to plaintiff's counsel for use in this judicial proceeding, subject to the protective provisions of Part IV of this Order, all documents in the defendant's possession which are at present subject to the aforesaid district court's order of April 23, 1980.

(3) Acting Commissioner Archey's claim of privilege for the remaining penalty documents is denied without prejudice on the ground that the privilege has not been properly claimed.

(4) Acting Commissioner Archey is allowed 30 days within which to file a proper claim of privilege for each of such penalty documents and to transmit to the court within that time for

examination by the court in camera each document for which privilege is claimed.

B. Other documents with respect to which defendant has claimed a privilege:

(1)Defendant shall transmit to the court within 15 days for examination by the court in camera the two in camera affidavits referred to in the affidavit of Admiral Bobby Inman, the Acting Director of the Central Intelligence Agency.

(2) The State Department documents for which a claim of privilege has been made by the Secretary of State shall be transmitted to the court within 15 days for examination by the court in camera.

(3) The Special Trade Representative documents for which a claim of privilege has been made shall be transmitted to the court within 15 days for examination by the court in camera.

C. Presidential papers: Plaintiff's motion for discovery of the Presidential papers of Presidents Nixon, Ford, and Carter is denied without prejudice.

D. Other documents encompassed within plaintiff's first request for production of documents: Defendant shall within 30 days make available for discovery, pursuant to the protective provisions contained in Part IV of this Order, the remaining documents covered by plaintiff's first requests for discovery. Draft protest decisions shall be included among the documents thus made available.

E. Plaintiff's first interrogatories: Defendant shall within 30 days supply answers to plaintiff's first interrogatories.

II. On Defendant's Motion To Compel

Defendant's motion to compel discovery pursuant to its first request for production of documents and its first interrogatories is allowed, with the exception of those interrogatories and documents covering communications between plaintiff and members of Congress. The court is of the view that at this stage the relevance of such communications seems borderline and the burden of complying unduly great. See 4 Moore's Federal Practice, pp. 26–135. Accordingly, the court sustains the objection of discovery of such communications without prejudice. With the foregoing exception, plaintiff shall respond to defendant's first interrogatories and request for production of documents within 30 days.

III. The Time Periods Specified Above May Not Be Extended Except for Good Cause Shown

IV. Protective Provisions

a. All of the information contained in the documents shall be deemed to be protected information. Should plaintiff's counsel believe that a particular document or item contained in a document is not entitled to confidential treatment, plaintiff's counsel shall not disclose the document or item and shall consult with defendant's counsel. If defendant's counsel agrees that the document or item does not appear to be confidential, plaintiff's counsel shall not disclose the document or item for three business days after receipt of the opinion of defendant's counsel so as to permit the individual or entity which submitted the document to apply for intervention for the purpose of filing an objection to disclosure with the Court. If such an application is filed, plaintiff's counsel shall not disclose the document or item until the Court rules upon the application and the objection. If defendant's counsel objects to, or fails to respond in a timely manner to plaintiff's counsel's request for disclosure of the document or the item, plaintiff's counsel shall not disclose the document or item until the differences between plaintiff's and defendant's counsel have been resolved by the Court.

b. Plaintiff's counsel may disclose the protected information to their legal associates and office personnel actively assisting in the litigation, but shall not disclose the protected information, directly or indirectly, to anyone else, except as provided by this Order.

c. If, in the opinion of plaintiff's counsel, it becomes necessary to consult with experts in evaluating the protected information, they shall, before any disclosure, notify and obtain the consent of defendant's counsel to disclosure to identified experts who shall agree not to disclose what they learn from the documents containing the protected information; if after seven (7) days following notification of defendant's counsel, counsel for the respective parties cannot agree upon the need for an expert or upon a suitable expert, plaintiff's counsel may submit the matter to the Court for resolution.

d. Any persons obtaining access to such protected information shall not make copies or reveal the contents of the documents containing the protected information, or use the protected information obtained for any purpose other than for the purpose of this litigation. Nothing in this Order shall preclude disclosure of the documents or the protected information contained in them to an individual or entity which was the source of the information.

e. Henceforth, should any party to this case file with the Court any document containing information which is protected by this Order, either (1) directly pursuant thereto, or (2) by incorporation through separate agreement between the parties, said party shall request the Clerk of the Court, or an employee of his office, to seal said document and to restrict access thereto to counsel for the parties and the Court personnel authorized access thereto by the Court.

f. The party filing such document as described in paragraph e, *supra*, will, unless there is no unprotected material which is reasonably segregable from the protected information, in addition to filing the number of such documents as prescribed by the Rules of the United States Court of International Trade, file an additional copy of the document, with the protected information deleted, for inclusion in that part of the Court file to which the general public has access.

g. Any party filing a document containing protected information shall indicate conspicuously thereon that the document contains information protected by a protective order.

h. Any party filing a copy of a document, with protected information deleted from said copy, in accordance with paragraph f, *supra*, shall indicate conspicuously on said copy that certain protected information has been deleted therefrom and where such deletions have been made on the copy.

i. Should a request for the sealing of a document, as described in paragraph e, *supra*, be made of the Clerk of the Court or of an employee of his office, such request shall be honored.

j. Upon conclusion of this litigation, Mr. Ikenson and Mr. Curtis shall return to defendant's counsel all documents, then in Mr. Ikenson's and Mr. Curtis' possession, containing protected information and any copies made of such documents, including any documents or copies held by persons authorized under paragraphs a and b, *supra*, to have access thereto, except for copies which contain work notes of counsel for plaintiff or other authorized persons. These latter documents shall be destroyed. Mr. Ikenson may retain one copy of all briefs and other documents filed by or with the Court which contain protected information.

k. Nothing in this Order shall preclude the parties from seeking such further orders of the Court as may be necessary to provide for further sealing and/or opening for public inspection of any documents or other things covered by this Order.

(Slip Op. 81–45)

AMERICAN AIR PARCEL FORWARDING COMPANY, LTD., A HONG KONG CORPORATION, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 81–4–00428

Memorandum and Order on Plaintiff's Motion for a Preliminary Injunction

[Plaintiff's motion granted.]

(Dated May 15, 1981)

Richard A. Kulics, Esq., attorney for plaintiff.

Goodman, Miller & Miller, Esqs., of counsel by: *Jonathan Miller*, Esq., for the plaintiff.

Thomas S. Martin, Acting Assistant Attorney General, for the defendant by *Joseph I. Liebman*, Esq., Attorney in Charge, International Trade Field Office, Commercial Litigation Branch and *Susan L. Handler-Menahem*, Esq., of counsel.

RE, *Chief Judge:* Plaintiff, a foreign freight forwarder, moves this court for an order, enjoining the defendant, through its agent, the United States Customs Service, from (1) continuing the denial, by the District Director of Customs at the Port of Detroit, of plaintiff's "immediate delivery privilege", and (2) refusing to accept, for the benefit of plaintiff, the filing of entry documentation with uncertified checks, during the pendency of this action.

Plaintiff's motion for a preliminary injunction under Rule 65 was brought on by an Order to Show Cause issued on April 20, 1981. The court heard oral argument on the motion by a telephone conference call on April 22, 1981.

On April 27, 1981, the court granted plaintiff's motion for a preliminary injuction. This opinion incorporates that order, and sets forth the facts and reasons upon which the requested relief was granted.

Plaintiff is a freight consolidator with its principal place of business in Hong Kong. Plaintiff consolidates freight owned by various shippers for delivery to specific consignees in the United States. In importing merchandise, plaintiff prepares a consolidated entry, enters the goods, pays the duty, and then, through the use of common carriers such as United Parcel Service, delivers the goods to the ultimate consignee. As a course of business plaintiff posts single entry bonds to indemnify the Customs Service for any loss of revenue.

Plaintiff alleges that, while "it must ordinarily pay duties on entered merchandise within ten working days", it does not receive those monies until twenty-nine days later. Plaintiff recoups the monies by shipping the goods C.O.D. to the consignee.

Plaintiff routinely imports merchandise each week through the Port of Detroit and pays duty on the merchandise by uncertified

check. Plaintiff received a shipment on March 27 and March 30, 1981, on which duties were due on April 10 and April 13, 1981, respectively. Plaintiff claims that several days prior to April 10, 1981, the import control officer in Detroit stated that, beginning with the April 10 entry, plaintiff would have to pay the duty on that and all future entries by certified check. Plaintiff alleges the reason for the Customs Service's action was that certain uncertified checks issued the prior year had been dishonored. The defendant stated that it erred in continuing to accept uncertified checks and advised plaintiff that it would now require plaintiff's checks to be certified.

Plaintiff questioned the import control officer on the applicability of Customs Regulation 24.1(a)(3). This regulation authorizes an importer to present uncertified checks when the revenue is protected by the posting of a single entry bond for the full value of the duties owing on the shipment. Plaintiff alleges that the import control officer responded by stating that the decision was final, and that plaintiff could challenge the decision by submitting an entry with an uncertified check, having it rejected, and then filing a protest.

Plaintiff filed its entries on April 10 and April 13, 1981, with uncertified checks, both of which were rejected. On April 6, 1981, plaintiff received a letter from the acting District Director stating that certified checks would be required with all plaintiff's entries, and that plaintiff's immediate delivery privileges were suspended.

The parties raise basic questions pertaining to the jurisdiction of the court, the validity of the plaintiff's cause of action, and the "equity jurisdiction" of the court.

The court's authority to grant the requested relief presents the threshold question of whether the action is within its subject matter jurisdiction. Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the particular proceeding belongs. *See Murrell* v. *Stock Growers' National Bank*, 74 F. 2d 827, 831 (10th Cir. 1934), and cases cited therein. The subject matter jurisdiction of the Court of International Trade, as established by the Customs Courts Act of 1980, encompasses all "civil actions arising out of import transactions and the Federal statutes affecting international trade." 126 Cong. Rec. H9340 (daily ed. Sept. 22, 1980) (remarks of Rep. Volkmer). Upon the facts recited, it is clear that plaintiff's case comes within the general class of cases over which this court has subject matter jurisdiction.

Jurisdiction, the power of this court to determine the case presented for decision, exists by virtue of the statutory provisions of the Customs Courts Act of 1980. More specifically, this case comes within the broad "residual grant of jurisdictional authority" of this court as described in 28 U.S.C. § 1581(i). H.R. Rep. No. 1235, 96th Cong. 2d

Sess. 47 (1980). In particular, paragraphs (i) (1) and (4) confer jurisdiction over any civil action "that arises out of any law of the United States providing for—

"(1) revenue from imports or tonnage;

* * * * * * *

'(4) administration and enforcement with respect to matters referred to in paragraphs (1)–(3) of this subsection * * *"

This court's jurisdiction over plaintiff's cause of action "arises out of [a] law of the United States", namely, 19 U.S.C. § 1648, and the Customs Service's administration and enforcement of its regulations. See 19 CFR §§ 24.1(a)(3) and 142.13(a). These regulations authorize customs officers to receive uncertified checks in payment of duties upon the filing of an entry bond, and to require the deposit of estimated duties and the filing of entry summary documentation before release of the goods if the importer "has failed repeatedly to file entry summary documentation without justification".

In several cases since November 1, 1980, the effective date of the Customs Courts Act of 1980, this court has found subject matter jurisdiction to exist within the statutory language embodied in 28 U.S.C. §§ 1581(i) (1) and (4). *See generally, Heraeus-Amersil, Inc.* v. *United States*, 1 CIT—, Slip Op. 81–33 (April 24, 1981); *DiJub Leasing Corp.* v. *United States*, 1 CIT—, Slip Op. 80–9 (December 5, 1980); *Zenith Radio Corp.* v. *United States*, 1 CIT—, Slip Op. 80–10 (December 9, 1980).

Section 1581(i) was apparently drawn from 28 U.S.C. § 1331, the federal question jurisdictional provision with respect to United States district courts. Section 1581(i) may be said to accomplish, as to the Court of International Trade, the purpose served by § 1331 for the district courts.

Although the United States Court of International Trade may have subject matter jurisdiction, there remains the possibility that a particular complaint may not state a cause of action upon which relief may be granted.

This point is illustrated by the case of *Bell* v. *Hood*, 327 U.S. 678 (1945). In *Bell* v. *Hood*, the Supreme Court of the United States, holding that the subject matter jurisdiction of a court cannot be defeated by the "possibility" that plaintiff's allegations may fail to state grounds upon which the requested relief may be granted, observed:

"[F]ailure to state a proper cause of action calls for a judgment on the merits and not a dismissal for want of [subject matter] jurisdiction. Whether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided after and not before the court

> has assured jurisdiction over the controversy. If the court does later exercise its jurisdiction to determine that the allegations in the complaint do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jurisdiction." *Id*, at 682, citing *Swafford* v. *Templeton*, 185 U.S. 487, 493, 494; and *Binderup* v. *Pathe Exchange*, 263 U.S. 291, 305–8.

As was made clear in *Bush* v. *State Industries, Inc.*, 599 F. 2d 780, 784 (6th Cir. 1979), in determining the existence of subject matter jurisdiction, a court must examine the alleged claim to see if it "actually 'arises under' the Constitution or federal statutes and is not made solely for the purpose of obtaining jurisdiction". If the case "arises under" the Constitution or the federal statutes, the existence of subject matter jurisdiction is not to be confused with ultimate success on the merits after trial.

The crucial question that the court must decide in each case is whether plaintiff's complaint has "any legal substance," in coming within the subject matter jurisdiction of the court. *Bush*, at 784–785. The failure to state a cause of action upon which relief can be granted is not relevant to the court's determination of the existence of its subject matter jurisdiction. *Bush*, at 785. The court must assume or exercise its jurisdiction in order to determine whether or not the complaint states a cause of action on which it may grant relief. *Bell*, at 682.

Jurisdiction, the power to decide a case presented for adjudication, should not be confused with a court's so-called "equity jurisdiction." When a court has jurisdiction over the subject matter and the parties, it has the power to decide the case, and "equity jurisdiction" can only refer to its authority and discretion to grant equitable relief. The words refer to those types or classes of cases formerly heard by courts of equity, as distinguished from the ordinary courts of law. In view of the merger of law and equity, the courts may grant any proper relief whether formerly denominated legal or equitable. Hence, to say that a court has "equity jurisdiction" is merely to say that it is authorized to exercise those equitable powers formerly devised or exercised by courts of equity. As a practical matter, it implies that a court is authorized to grant or withhold any of the equitable remedies.

On the court's authority to grant an equitable remedy, it must be noted that the general powers of the federal courts, when sitting as courts of equity, can only be exercised in cases within their subject matter jurisdiction as defined by Congress. *Sprague* v. *Ticonic Bank*, 307 U.S. 161 (1939); *Mason* v. *United States*, 260 U.S. 545 (1923). By the Customs Courts Act of 1980, Congress has clearly defined this court's subject matter jurisdiction and remedial powers. Congress has thereby conferred upon this court the statutory authority and

power to grant the equitable relief requested. Since the court is expressly authorized to grant an equitable remedy, it may grant plaintiff the requested relief. 28 U.S.C. § 1585; 28 U.S.C. § 2643(c)(1). Therefore, since the court has jurisdiction, there is no question as to its authority or power to do equity in the case at bar.

In enacting the Customs Courts Act of 1980, Congress indicated that the United States Court of International Trade "is to be guided by the same factors utilized by a federal district court when it considers a request for a preliminary * * * injunction." H.R. Rep. No. 1235, 96th Cong., 2d Sess. 61 (1980). The four factors most generally considered were applied by this court in the *DiJub Leasing Corp.*, and *Zenith Radio Corp.* cases. *See Washington Metropolitan Area Transit Commission* v. *Holiday Tours, Inc.*, 559 F. 2d 841 (D.C. Cir. 1977), and *Virginia Petroleum Jobbers Association* v. *F.P.C.*, 259 F. 2d 921 (D.C. Cir. 1958). *See also A. O. Smith Corp. et al.* v. *F.T.C.*, 530 F. 2d 515 (3d Cir. 1976).

More recently, the relevant factors were succinctly set forth by the United States Court of Customs and Patent Appeals in *S. J. Stile Associates Ltd.* v. *Dennis Snyder*, 67 CCPA—, C.A.D. 1261, — F, 2d — (1981): "(1) a threat of immediate irreparable harm; (2) that the public interest would be better served by issuing than by denying the injunction; (3) a likelihood of success on the merits; and (4) that the balance of hardship on the parties favored [plaintiff]".

It is not questioned that a request for a preliminary injunction is of an extraordinary nature which should be granted sparingly, *Dorfmann* v. *Boozer*, 414 F. 2d 1168, 1173 (D.C. Cir. 1969). Indeed, it has been said that it should be granted only upon a clear showing that the movant is entitled to the requested relief. *Flintkote Co.* v. *Blumenthal*, 469 F. Supp. 115, 125–126 (N.D.N.Y. 1979), *aff'd*, 596 F. 2d 51 (2d Cir. 1979). Although plaintiff bears the burden of persuasion, and a heavy burden of producing evidence, the applicable case law does not require that plaintiff sustain that high burden of proof as to each of the four factors. *Washington Metropolitan Area Transit Commission* v. *Holiday Tours, Inc.*, and *Virginia Petroleum Jobbers Association* v. *F.P.C.*, *supra*. Rather, the "balance-of-hardship" test, referred to in *S. J. Stile Associates Ltd.*, *supra*, permits the court to exercise a sound discretion and flexibility in the interaction of the four factors in granting or denying the request for interlocutory injunctive relief.

In *Holiday Tours*, the Court of Appeals for the District of Columbia refined its holding in the *Virginia Petroleum Jobbers* case. In so doing, Judge Leventhal stated that the court was following the established practice in other courts by moving "away from a standard incorporating a wooden 'probability' requirement and toward an analysis

under which the necessary showing on the merits is governed by the balance of equities as revealed through an examination of the other three factors". *Holiday Tours*, at 844. The court relied upon the "leading case" from the Second Circuit, *Hamilton Watch Co.* v. *Benrus Watch Co.*, 206 F. 2d 738, 740 (2d Cir. 1953), which explained:

> "To justify a temporary injunction it is not necessary that the plaintiff's right to a final decision, after a trial, be absolutely certain, wholly without doubt; if the other elements are present (i.e., the balance of hardships tips decidedly toward plaintiff), it will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation."

Holiday Tours, at 844. The court also quoted from a more recent Second Circuit decision, *Charlie's Girls, Inc.* v. *Revlon, Inc.*, 483 F. 2d 953, 954 (2d Cir. 1973) (per curiam), which phrased the test as follows:

> "One moving for a preliminary injunction assumes the burden of demonstrating either a combination of probable success and the possibility of irreparable injury or that serious questions are raised and the balance of hardships tips sharply in his favor."

Summarizing for the court in *Holiday Tours*, Judge Leventhal wrote:

> "We believe that this approach is entirely consistent with the purpose of granting interim injunctive relief, whether by preliminary injunction or by stay pending appeal. Generally, such relief is preventative, or protective; it seeks to maintain the status quo pending a final determination of the merits of the suit. An order maintaining the status quo is appropriate when a serious legal question is presented, when little if any harm will befall other interested persons or the public and when denial of the order would inflict irreparable injury on the movant. There is substantial equity, and need for judicial protection, whether or not movant has shown a mathematical probability or success."

In the recent case of *Blackwelder Furniture Co.* v. *Seilig Manufacturing Co.*, 550 F. 2d 189 (4th Cir. 1977), the Fourth Circuit discussed in great depth the balance-of-hardship test. Initially, the court must balance "the 'likelihood' of irreparable harm to the plaintiff against the 'likelihood' of harm to the defendant". *Blackwelder*, at 195. There is a correlation between the likelihood of success on the merits, and the probability of irreparable injury without the issuance of the preliminary injunction. The courts utilize a sliding scale. For example, in *Telvest, Inc.* v. *Bradshaw*, 618 F. 2d 1029, 1032–1033, the Court of Appeals for the 4th Circuit indicated:

> "If the harm to the plaintiff greatly outweights the harm to the defendant, then enough of a showing has been made to permit the issuance of an injunction, and plaintiff need not show a likeli-

> hood of success on the merits, for a grave or serious question is sufficient. But as the harm to the plaintiff decreases, when balanced against the harm to the defendant, the likelihood of success on the merits becomes important."

Thus, "[t]he importance of probability of success increases as the probability of irreparable injury diminishes, . . . and where the latter may be characterized as simply 'possible' the former can be decisive". *Blackwelder*, at 195. These factors, albeit significant, must be considered together with the potential harm to the public interest by the granting or denial of injunctive relief.

In *Blackwelder*, the court stated that "[t]he balance of hardship test correctly emphasizes that, where *serious* issues are before the court, it is a sound idea to maintain the *status quo ante litem*, provided that it can be done without imposing too excessive an interim burden upon the defendant". [Emphasis in original.] *Blackwelder*, at 194–195. See also *Hamilton Watch Co* , at 740. As may be noted, therefore, the balance of hardship test is the proper standard for the granting or withholding of interlocutory injunctive relief.

In considering a request for a preliminary injunction, this court will consider the four factors set forth in *S. J. Stile Associates Ltd.*, *supra*, and will ascribe to each factor its proper weight. While considering the public interest in all cases, the critical factors are the probability of irreparable injury to the movant should the equitable relief be withheld, and the likelihood of harm to the opposing party if the court were to grant the interlocutory injunction. Although the extraordinary remedy of a preliminary injunction is not available unless the moving party's burden of persuasion is met as to all four factors, the showing of likelihood of success on the merits is in direct proportion to the severity of the injury the moving party will sustain without injunctive relief, i.e., the greater the hardship the lesser the showing.

In the case at bar, the court has carefully reviewed plaintiff's moving papers and the record to determine if there is a sufficient showing of irreparable injury to plaintiff without the issuance of the preliminary injunction. Plaintiff alleges that it predicates its business operations on processing imported merchandise through Customs under an immediate delivery privilege. Upon release of the goods, plaintiff immediately ships them C.O.D. by common carrier to the ultimate consignee. Under this arrangement, plaintiff must await reimbursement for payment of any duties from the common carrier. Payment is often in the form of uncertified checks from the ultimate consignees which must await bank clearance for ultimate collection by plaintiff. Although the court will not comment upon the method by which plaintiff conducts its business, it is aware of the possibility of irreparable harm if plaintiff's immediate delivery privileges are

revoked. The revocation can cause significant disruption of plaintiff's business operations, as well as further delays in its collection process.

Plaintiff has raised serious questions as to whether it "has failed repeatedly . . . without justification", under the terms of 19 CFR § 142.13, to file the proper entery documentation with Customs to warrant revocation of its immediate delivery privileges. Plaintiff alleges that for the past ten years, save one instance in April, 1980, it has complied with the applicable Customs regulations for immediate delivery privileges, and has not made repeated untimely filings. Furthermore, plaintiff contends that the two entries in question do not constitute a repeated failure to file timely entry documentation, and that, in any event, it had adequate justification.

Plaintiff also raises important questions whether it has complied with the requirements of 19 CFR § 24.1(a)(3), by payment of duties with an uncertified check secured by an entry bond or other bond, and whether that regulation permits plaintiff to pay liquidated as well as estimated duties by uncertified check. Plaintiff maintains that the rejection of its entries of April 10 and April 13, 1981, because of the proffered payment of estimated duties by uncertified check, is illegal and an abuse of discretion in light of 19 U.S.C. § 1648 and the applicable regulations.

Plaintiff, moreover, asserts that the defendant's revenue from estimated duties is clearly protected by virtue of its "posting of a single entry bond for the full value of the shipment and the duties owing thereon". In a footnote in its memorandum in opposition to plaintiff's motion for a preliminary injunction, the defendant has responded that "an entry bond does not protect the revenue insofar as estimated duties are concerned as that bond only related to liquidated duties". This issue alone presents a serious, substantial and difficult question of law which bears heavily on the ultimate outcome of the case before the court. Therefore, it is clear that the legal issues raised by plaintiff are sufficient to be considered "fair ground for litigation and thus for more deliberate investigation". *Hamilton Watch Co.*, at 740.

Since, on balance, the equities are in plaintiff's favor as to the issuance of the preliminary injunction, the court must examine the potential interim burden on the defendant, and the public interest. Defendant states that it has a statutory obligation under 19 U.S.C. § 1484(a)(2)(c) to protect the revenue from imports "to the maximum extent practicable", and must accord equal treatment to "all consignees of imported merchandise". Defendant further contends that an immediate delivery permit is a privilege which allows plaintiff to obtain immediate release of goods without depositing estimated duties until ten days later. Defendant also asserts that plaintiff has

abused this privilege through the untimely filing of entry summary documentation without justification, including the deposit of any estimated duties, and that plaintiff should not be permitted to take advantage of that abuse. According to defendant, "continuance of this privilege would not protect the revenue of the United States".

Finally, defendant states that, since plaintiff cannot pay the estimated duties when its merchandise is released, it may be undercapitalized. It submits, therefore, that the public should not be expected to serve as plaintiff's creditor by subsidizing its business operation.

The court is not unmindful of defendant's argument. It is of the opinion, nevertheless, that, in granting plaintiff's request for relief, the public interest and the revenue derived from import duties can be adequately protected by security in an appropriate amount in accordance with Rule 65(c) of the Rules of the United States Court of International Trade. Under that rule, the security will protect defendant for "such costs and damages as may be incurred or suffered" if it is found to have been wrongfully enjoined by this court.

In sum, the court has considered the balance between the potential harm to the defendant by granting the requested relief, the possibility of irreparable injury to plaintiff were the relief to be denied, and the serious questions of law and fact that have been presented. Under all of the circumstances, the court has concluded that a preliminary injunction should issue, conditioned upon plaintiff giving security of $300,000, the amount suggested by defendant.

Subsequent to the issuance of the order of April 27, 1981, the court was advised that the parties reached an agreement on the posting of security. The terms agreed upon provide that plaintiff will continue to file single entry bonds, and will continue to maintain its term bond on file with the District Director of Customs, Detroit, Michigan, in the amount of $150,000. In addition, the agreement provides that plaintiff shall file a bond in the amount of $25,000 with the Court of International Trade, in accordance with Rule 65(c) of the Rules of this court, to secure defendant against the payment of any costs and damages that may be incurred by it pending the resolution of this action.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *May 18, 1981.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P81/61	Re, C.J. May 11, 1981	Abitibi-Price Sales Corporation	79-9-01377	Item 252.67 0.08¢ per lb. +2%	Item 252.65 Free of duty	Agreed statement of facts	Champlain-Rouses Point (Ogdensburg) HBX Offset paper; paper of that class or kind chiefly used in U.S. in printing of newspapers pursuant to T.D. 56349

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P81/62	Re, C.J. May 11, 1981	General Instrument Corporation	79-5-00677	Item 687.10 5% with an allowance for duty-free treatment under item 807.00 of fabricated components of U.S. origin	Item A687.10 Free of duty under the Generalized system of Preferences	Agreed statement of facts	New York Lamps imported from a designated beneficiary country (Mexico)
P81/63	Re, C.J. May 11, 1981	K Mart Corporation	78-10-01839	Item 737.95 17.5%	Item A737.15 Free of duty pursuant to General Headnote 3(c) of TSUS, authorized by title V of Trade Act of 1974, and Ex. Order No. 11888 of 11/26/75	Agreed statement of facts	Longview (Portland, Oreg.) Models to a scale larger than 1 to 85 produced within Hong Kong
P81/64	Maletz, J. May 11, 1981	Spiegel, Inc.	77-11-04786	Item 737.80 22%	Item 725.50 8%	Amico, Inc. v. U.S. (C.A.D. 1214)	Chicago Music boxes

P81/65	Re, C.J. May 14, 1981	Abitibi-Price Sales Corporation	80-3-00539	Item 252.67 0.08¢ per lb. + 2%	Item 252.65 Free of duty	Agreed statement of facts	Champlain-Rouses Point (Ogdensburg) HBX Offset paper; paper of that class or kind chiefly used in U.S. in printing of newspapers pursuant to T.D. 56349
P81/66	Re, C.J. May 14, 1981	Abitibi-Price Sales Corporation	80-4-00695	Item 252.67 0.08¢ per lb. + 2%	Item 252.65 Free of duty	Agreed statement of facts	Champlain-Rouses Point (Ogdensburg) HBX Offset paper; paper of that class or kind chiefly used in U.S. in printing of newspapers pursuant to T.D. 56349
P81/67	Re, C.J. May 14, 1981	Carmichael International Service, a/c Manufacturers Discount Furniture & Bedding, Inc., et. al.	75-6-01511, etc.	Item 359.50 25¢ per lb. +30%	Item 346.60 15¢ per lb. +25%	Agreed statement of facts	Los Angeles Rayon patchwork velvet pile fabric, in the piece, of man-made fiber
P81/68	Re, C.J. May 14, 1981	Montgomery Ward & Co.	80-4-00578	Item 382.04 42.5%	Item 382.81 25¢ per lb. +27.5%	Agreed statement of facts	New York Ladies wearing apparel with nonornamental shoulder tucking
P81/69	Ford, J. May 14, 1981	Montgomery Ward & Co.	75-12-03108, etc.	Items 380.84 and 382.81 25¢ per lb. +27.5%	Item 376.56 16.5%	H. Rosenthal Co. v. U.S. (C.D. 4769, aff'd C.A.D. 1236)	Baltimore Jackets and snowsuits

Decision of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/168	Re, C.J. May 11, 1981	Amerisam Co., Inc.	74-12-03361, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Los Angeles Miscellaneous articles
R81/169	Re, C.J. May 11, 1981	Arbor Import Corp.	73-1-00215, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Miscellaneous articles
R81/170	Re, C.J. May 11, 1981	B & H Importing Corp.	73-4-00845, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Miscellaneous articles

R81/171	Re, C.J. May 11, 1981	Brother Int'l Corp.	R66/12963, etc.	Export value (schedule A and B merchandise)	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values (schedule A merchandise) Appraised unit values less 7.5% net packed (schedule B merchandise)	Agreed statement of facts	Los Angeles Wooden consoles, etc. (schedule a merchandise); sewing machine heads, etc. (schedule B merchandise)
R81/172	Re, C.J. May 11, 1981	Frederick Atkins International	73-8-02393, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Miscellaneous articles
R81/173	Re, C.J. May 11, 1981	The Jordan International Co.	77-10-04556, etc.	Export value	Established by Japanese trading company price lists without a 6% addition to such value	Agreed statement of facts	Philadelphia; Wilmington, N.C.; New Orleans; New Haven (Bridgeport) Hot-rolled, coldrolled and galvanized steel sheets and plates
R81/174	Re, C.J. May 11, 1981	Midland International Corp.	74-11-03180, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Kansas City (St. Louis); New York; Los Angeles Miscellaneous articles

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/175	Re C.J. May 11, 1981	Rugby International Corp.	73-3-00763, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Miscellaneous articles
R81/176	Re, C.J. May 11, 1981	Sanyo Electric Inc.	74-10-02860, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Los Angeles Electronic articles
R81/177	Re, C.J. May 12, 1981	Bronton Apparel Ltd.	74-5-01195, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Wearing apparel, etc.
R81/178	Re, C.J. May 12, 1981	Brother Int'l Corp.	R65/2036, etc.	Export value (schedule A and B merchandise)	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values (schedule A merchandise) Appraised unit values less 7.5%, net packed (schedule B merchandise)	Agreed statement of facts	Philadelphia Wooden consoles, etc. (schedule A merchandise); sewing machines, etc. (schedule B merchandise)

R81/179	Re, C.J. May 12, 1981	WM. Filenes & Sons Co.	74-10-02853	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Boston Miscellaneous articles
R81/180	Re, C.J. May 12, 1981	Mitsubishi International Corp.	74-6-01654	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Portland, Oreg.; New York Miscellaneous articles
R81/181	Re, C.J. May 12, 1981	Starlight Trading Inc.	74-9-02677	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Los Angeles; New York Miscellaneous articles
R81/182	Re, C.J. May 14, 1981	Charmilles Corp. of America	80-1-00168	United States value	Determined by adding to f.o.b. unit invoice price in Swiss francs converted to a dollar value at fixed rate of exchange as shown on special customs invoice in entry documents (the "claimed value"), 53% of difference between claimed value and appraised value	Agreed statement of facts	New York Machine tools and accessories and parts

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/183	Re, C.J. May 14, 1981	Conti Rubber Products Inc.	78-1-00047, etc.	Foreign value	Appropriate claimed unit values (all in Deusche mark) listed to decision and judgment	Agreed statement of facts	New York Various automotive tires
R81/184	Re, C.J. May 14, 1981	Marubeni America Corp.	74-7-02001	Export value	Unit values found by appraising customs official, less ocean freight and marine insurance, and without additions to said values for currency fluctuation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Radio receivers and parts

R81/185	Re, C.J. May 14, 1981	Marubeni America Corp.	75-11-02869, etc.	Export value	Unit values found by appraising customs official, less ocean freight and marine insurance, and without additions to said values for currency fluctuation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Miscellaneous articles
R81/186	Re, C.J. May 14, 1981	Rachelle Laboratories, Inc.	76-5-01080	American selling price	$24 per kilo, net packed	Agreed statement of facts	New York Procaine penicillin
R81/187	Boe, J. May 14, 1981	Conti Rubber Products Inc.	74-7-01782	Foreign value	Appropriate claimed unit values (all in Deutsche mark) listed on schedule attached to decision and judgment	Agreed statement of facts	New Orleans Various automotive tires

International Trade Commission Notices

Investigations by the United States International Trade Commission

DEPARTMENT OF THE TREASURY, MAY 28, 1981.

The appended notices relating to investigations by the United States International Trade Commission are published for the information of Customs Officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

In the Matter of CERTAIN THERMAL CONDUCTIVITY SENSING GEM TESTERS AND COMPONENTS THEREOF	Investigation No. 337–TA–100

Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 13, 1981, and amended on May 6, 1981, under section 337 of the Tariff Act of 1930 (19 U.S.C. sec. 1337), on behalf of Ceres Electronics Corp., at 411 Waverly Oaks Park, Waltham, Mass. 02154, Adams-Smith, Inc., at P.O. Box 130, 34 Tower Street, Hudson, Mass. 01749, and MSB Industries, Inc., at 1180 Avenue of the Americas, New York, N.Y. 10036. The amended complaint (hereinafter referred to as the complaint) alleges unfair methods of competition and unfair acts in the importation of certain thermal conductivity sensing gem testers and components thereof into the United States, or in their sale, by reason of alleged (1) infringement by said thermal conductivity sensing gem testers of claims 21, 22, and 26 of U.S. Letters Patent 4,255,962, (2) infringement of claims 1, 2, 23, and 24 of U.S. Letters Patent 4,255,962 in the operation of said theremal conductivity sensing gem testers and the inducement of and/or contribution to said infringement, and (3) false advertising. The complaint further

alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that, after a full investigation, the Commission issue an exclusion order and a cease and desist order.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 (19 U.S.C sec. 1337) and in section 210.12 of the Commission's Rules of Practice and Procedure.

SCOPE OF THE INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission on May 13, 1981, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain thermal conductivity sensing gem testers and components thereof into the United States, or in their sale, by reason of alleged (1) infringement by said thermal conductivity sensing gem testers of claims 21, 22, or 26 of U.S. Letters Patent 4,255,962, (2) infringement of claims 1, 2, 23, or 24 of U.S. Letters Patent 4,255,962 in the operation of said thermal conductivity sensing gem testers and the inducement of and/or contribution to said infringement, and (3) false advertising, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—Ceres Electronics Corp., 411 Waverly Oaks Park, Waltham, Mass. 02154; Adams-Smith, Inc., P.O. Box 130, 34 Tower Street, Hudson, Mass. 01749; MSB Industries, Inc., 1180 Avenue of the Americas, New York, N.Y. 10036.

(b) The following respondents are alleged to infringe claims 1, 2, 21, 22, 23, 24, and 26 of U.S. Letters Patent 4,255,962 and to induce and/or contribute to the infringement of claims 1, 2, 23, and 24 of said patent and are the parties upon which the complaint is to be served: Presidium Diamonds Pte Ltd., P.O. Box 383, Benoni, Tvl., 1500, South Africa; Lien International Trading Pte Ltd., Suite 2104, Shaw Towers, Beach Road, Singapore, Singapore 0718; Gem Instruments Corp., P.O. Box 2147, 1735 Stewart Street, Santa Monica, Calif. 90406; Gemological Institute of America, P.O. Box 2110, 1660 Stewart Street, Santa Monica, Calif. 90406.

The latter two above-named respondents are also alleged to be engaged in false advertising.

(c) Although the complaint named as proposed respondents Rayner Optical Company Ltd., 17 Lorna Road, Hove, East Suffolk, England, BN3 3ET, and Gemological Instruments Ltd., St. Dunstan's House, Carey Lane, London, England EC2V 8AB, they are not so named in this investigation because they are not alleged to be involved in the importation of thermal conductivity sensing gem testers or components thereof which infringe the '962 patent.

(d) M. Brooke Murdock, Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to sections 201.16(d) and 210.21(b) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: M. Brooke Murdock, Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–0113.

By order of the Commission.

Issued: May 15, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN SCREW JACKS AND COMPONENTS THEREOF	Investigation No. 337–TA–98

Notice of Amendment of Notice of Investigation and Designation of the Investigation as "More Complicated"

AGENCY: U.S. International Trade Commission.

ACTION: Amendment of complaint to include an allegation of infringement of an additional patent and designation of the investigation as "more complicated."

SUMMARY: On May 18, 1981, the Commission determined to amend the notice of investigation to include infringement of U.S. Letters Patent 3,977,267 by respondents Seeburn Metal Products, Ltd., and General Motors Corp., as an alleged unfair act or unfair method of competition within the meaning of section 337 of the Tariff Act of 1930 (19 U.S.C. 13337).

On April 13, 1981, complainant Auto Specialities Manufacturing Co. filed a motion to amend the complaint and notice of investigation to include U.S. Letters Patent 3,977,267. The motion was opposed by respondents Seeburn Metal Products, Ltd., and General Motors Corp.

The original complaint in this investigation, which was instituted on February 11, 1981, alleged that screw jacks made by Seeburn infringed U.S. Letters Patent 3,862,577 (the '577 patent) because of a pinion gear contained in the imported screw jacks. The '267 patent, which the complainant now wishes to add allegedly covers another component of the screw jacks, the bottom gear.

On May 1, 1981, the Commission Administrative Law Judge, Judge Saxon, recommended that the Commission amend the notice to add the '267 patent and also declare this investigation "more complicated."

The Commission's Action and Order, and Memorandum Opinion in this matter is available for public inspection in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jeffrey Neeley, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0359.

By order of the Commission.

Issued: May 19, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN HOT AIR CORN POPPERS AND COMPONENTS THEREOF	Investigation No. 337-TA-101

Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. section 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 16, 1981, and amended April 30, 1981, and on May 13, 1981 under section 337 of the Tariff Act of 1930 (19 U.S.C. section 1337), on behalf of Wear-Ever Aluminum, Inc., 1089 Eastern Avenue, Chillicothe, Ohio 45601. The complaint alleges unfair methods of competition and unfair acts in the importation of certain hot air corn poppers into the United States, or in their sale, by reason of the alleged infringement by said hot air corn poppers of claims 1, 2, 3, and 5 of U.S. Letters Patent 4,178,843. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that, after a full investigation, the Commission issue an order excluding the articles in question from entry into the United States for the term of the patent, except under license.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure.

SCOPE OF THE INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on May 13, 1981, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unauthorized importation of certain hot air corn poppers and components thereof into the United States, or in their sale, by reason of the alleged infringement by said hot air corn poppers of claims 1, 2, 3, or 5 of U.S. Letters Patent 4,178,843, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Wear-Ever Aluminum, Inc., 1089 Eastern Avenue, Chillicothe, Ohio 45601.

(b) The respondents are the following persons, alleged to be in violation of section 337, and are parties upon whom the complaint is to be served: Yamada Electric Industries, Ltd., 1–30–1 Yahiro, Sumida-Kv, Tokyo, Japan 131; Chiap Hua, 30–32 Kung Zip Street, Kwai Chung N.T., Hong Kong; The West Bend Company, Inc., 400 W. Washington Street, West Bend, Wis. 53095; Sunbeam Corporation, 4600 W. Roosevelt Road, Chicago, Ill. 60650; Maxim Associates Corporation, 9131 Queens Boulevard, Elmhurst, N.Y. 11373; The Stop & Shop Companies, Inc., 393 D Street, Boston, Mass. 02101; K-Mart Corporation, 3100 W. Big Beaver Road, Troy, Mich. 48084.

(c) John Milo Bryant, Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

The phrase "and components thereof" has been added to paragraph (1) above on the basis of informal investigatory activities by the Commission which revealed that hot air corn poppers of the type alleged to infringe claims 1, 2, 3, and 5 of U.S. Letters Patent 4,178,843 can be imported in component parts as well as entirely assembled units.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR section 210.21), Pursuant to sections 201.16(d) and 210.21(b) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefore is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official working hours (8:45

a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436. telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: John Milo Bryant, Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–0419.

By order of the Commission.

Issued: May 19, 1981.

KENNETH R. MASON,
Secretary.

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